

REPORT OF THE NORTH DAKOTA LEGISLATIVE COUNCIL

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



FIFTY-EIGHTH LEGISLATIVE ASSEMBLY
2003

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January 7, 2003

Honorable John Hoeven
Governor of North Dakota

Members, 58th Legislative
Assembly of North Dakota

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

Major recommendations include elimination of the federal income tax deduction for corporations and reduced corporate income tax rates; statutory limitations on nonresident hunters; removal of the nighttime speed limit differential; protection of customers under the state's financial privacy law; transfer of responsibility for indigent defense contracts from the judicial branch to the Office of Administrative Hearings; inclusion of peace officers and correctional officers in the National Guard retirement plan; establishment of minimum high school graduation requirements; increases in required high school course offerings; limitations on information provided on credit card receipts; changes in speed limit fines; continuation of flexibility in University System financial management and budgeting; broadening of the class of adopted children qualifying as children with special needs; establishment of a criminal justice information sharing board; and changes in the capitalization rate used for property tax valuation of agricultural property.

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,

A handwritten signature in black ink that reads "Wesley R. Belter".

Representative Wesley R. Belter
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 December 2000 through November 2002. The Council voided rules of the Department of Financial Institutions governing advertising by payday lenders on the grounds that statutory provisions adequately govern unfair or deceptive acts, practices, or advertising by lenders. The Council considered voiding rules of the State Water Commission, Department of Transportation, and Superintendent of Public Instruction but withdrew that consideration in each case and agreed to amendments by the agencies in question. The Council considered voiding rules of the Education Standards and Practice Board but withdrew that consideration after receiving more information from board representatives.

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 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; interstate issues involving local governments, including cooperation with the appropriate authorities of other states; and statutory changes required to implement commission recommendations.

The Council studied the feasibility and desirability of creating cost-sharing mechanisms for the unexpected discovery of cultural and paleontological resources within local road projects. The Council makes no recommendation concerning this study.

The Council recommends House Bill No. 1024 to consolidate several special county mill levies into a county general fund levy that may not exceed 134 mills and to allow the voters of a county to refer the question of consolidating the levies to a vote of the qualified electors of the county.

The Council recommends House Bill No. 1025 to revise the state aid distribution formula for cities and counties to account for population changes resulting from the 2000 Federal Census.

The commission received reports regarding tobacco education and cessation, homeland security, e-commerce taxation, public school funding and taxation, the tool chest legislation from 1993, and the generation of electricity through wind energy. The Council makes no recommendations concerning these issues.

AGRICULTURE COMMITTEE

The Council studied issues related to genetic modification of (transgenic) agricultural products, including impacts on health, the environment, the food supply, product labeling, and actions by other jurisdictions regarding experimental medicine and research, and the promulgation of accurate information regarding transgenic efforts that exist or are expected to exist in the near future. The Council recommends House Bill No. 1026 to require the creation of a transgenic wheat board.

The Council studied methods to encourage the production and consumption of ethanol. The Council recommends Senate Bill No. 2027 to require that all gasoline having an octane rating of 87 and offered for sale be blended with ethanol at the rate of 10 percent.

The Council studied the use of biodiesel fuel in this state. The Council makes no recommendation concerning this study.

The Council studied grain shipping rates. The Council makes no recombination concerning this study.

The Council received reports from the State Seed Commissioner regarding the regional, national, and international status of genetically enhanced or modified seeds and crops and a report from the State Board of Agricultural Research and Education regarding ongoing research activities and expenditures.

BUDGET COMMITTEE ON GOVERNMENT ADMINISTRATION

The Council studied the management structure and oversight of the Veterans Home and the selection process for the commandant of the home. The Council recommends House Bill No. 1027 to change the residency requirement for a veteran to be eligible for admission to the Veterans Home from one year to 30 days; House Bill No. 1028 to change Veterans Home admission requirements by reducing the number of years a spouse or surviving spouse must be married to a veteran from five years to one year and removing the requirement that a spouse or surviving spouse be at least 45 years old; House Bill No. 1029 to require a veteran's service-connected compensation to be included in the veteran's contribution to the cost of care at the Veterans Home; House Bill No. 1030 to provide for a Legislative Council study of the future role of the Veterans Home, including the development of a strategic plan for the operations of the home and the implementation of the recommendations included in the State Auditor's performance audit.

The Council studied the Racing Commission, including its authority to schedule, promote, support, and regulate live or simulcast racing in North Dakota. The Council recommends Senate Bill No. 2028 to provide that any money collected by the Racing Commission from license fees and fines be deposited in the Racing

Commission operating fund rather than the general fund and, subject to legislative appropriation, be spent for operating costs of the commission.

The Council studied highway construction and maintenance funding, including revenue sources and distribution formulas for the state, cities, and counties. The Council recommends House Bill No. 1031 to authorize the director of the Department of Transportation to enter agreements with counties or cities for the cooperative or joint administration of an activity that will enhance the efficiency and effectiveness of the state highway system.

The Council conducted budget tours of state agencies and institutions. The Council recommends Senate Concurrent Resolution No. 4001 to provide for a Legislative Council study of the feasibility and desirability of allowing human service centers additional funding flexibility.

BUDGET COMMITTEE ON GOVERNMENT SERVICES

The Council received reports from the State Department of Health regarding the implementation of the community health grant program. In addition, the Council studied state agency programs dealing with the prevention and treatment of alcohol, tobacco, and drug abuse and other kinds of risk-associated behavior; and received reports on tobacco settlement trust fund collections, Centers for Disease Control and Prevention funding, and the dental loan repayment program.

The Council received reports from the Central Personnel Division regarding the implementation, progress, and bonuses provided under state agency recruitment and retention bonus pilot programs. The Council recommends House Bill No. 1032 to continue the employee recruitment and retention bonus pilot program through June 30, 2005.

The Council monitored agency compliance with legislative intent included in the 2001-03 appropriations, reviewed the status of major state agency and institution appropriations, and received reports on oil tax revenues. The Council received information on the status of investments administered by the State Investment Board, Bank of North Dakota, Land Department, and Public Employees Retirement System; and on the status of capital construction bond payments as compared to the statutory sales tax limitation and outstanding debt balances.

The Council received reports regarding the history of the housing development fund program and the bistate authority legislation providing for agreements between North Dakota and South Dakota to jointly exercise any agency, department, or institution function authorized by law.

BUDGET COMMITTEE ON HEALTH CARE

The Council studied mandated health insurance coverage. The Council recommends Senate Bill No. 2029 to provide that any health insurance coverage mandate approved by the Legislative Assembly only

applies to the state public employees group health insurance program for a period of two years during which time the Public Employees Retirement System is to evaluate the mandates actual costs and benefits and prepare a report for consideration by the next Legislative Assembly in determining if the mandate should be allowed to expire or expand it to all insurers.

The Council studied prescription drugs prices and possible mechanisms to lower costs to consumers in the state, and whether the state should establish a program to assist in the purchase of prescription drugs based upon income; the coordination of the medical assistance and children's health insurance programs; the coordination of benefits for children with special needs under the age of 21 among the Department of Public Instruction, the Department of Human Services, and private insurance companies with the purpose of optimizing and coordinating resources and expanding services, including augmentative communication devices and therapy services. The Council makes no recommendations concerning these studies.

The Council received an annual report from the State Board of Nursing on its study of the nursing educational requirements and the nursing shortage in this state and the implications for rural communities and a report from the Insurance Commissioner regarding motor vehicle insurance independent medical examinations.

BUDGET COMMITTEE ON HUMAN SERVICES

The Council studied the long-term care needs and nursing facility payment system in North Dakota. The Council asked the Department of Human Services to present the final report of the long-term care needs assessment and nursing facility payment system study to the House and Senate Human Services and Appropriations Committees of the 2003 58th Legislative Assembly.

The Council studied the senior citizen mill levy matching grant program; the feasibility and desirability of establishing an alternatives-to-abortion services program; and the issues and concerns of implementing Charitable Choice, the privatization of federally funded welfare services through faith-based organizations. The Council makes no recommendations concerning these studies.

The Council received reports from the Department of Human Services on the temporary assistance for needy families (TANF) program and received quarterly reports from the Department of Human Services regarding the progress in preparing a joint recommendation with developmental disabilities services providers for consideration by the 58th Legislative Assembly regarding a new state-wide developmental disabilities services provider reimbursement system.

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 authorized the transfer of up to \$25 million from the Bank of North Dakota to the state general fund to the extent necessary to meet the revenue shortfall.

The Council approved the Fargo Family HealthCare Center plan to address sustainability of programs and services and approved the forgiveness of \$395,000 of debt owed by the Fargo Family HealthCare Center to the University of North Dakota School of Medicine and Health Sciences.

The Council authorized the expenditure of additional other funds for capital projects at the University of North Dakota, Williston State College, North Dakota State University, Bismarck State College, Minot State University, and the Carrington Research Extension Center. The Council received reports on local funds expenditures at the institutions of higher education for the 1999-2001 biennium and on college president retention awards.

The Council received reports from the Department of Human Services on the status of actual medical assistance expenditures compared to projections and whether the actual expenditures for the biennium were anticipated to exceed funding appropriated, and information on the number of North Dakota families receiving assistance from state programs.

The Council approved the Workers Compensation Bureau request to establish a casualty insurance organization to provide extraterritorial worker's compensation insurance coverage. The Council received reports from the Workers Compensation Bureau on the status of the risk management workers' compensation program, and progress on construction of the Workers Compensation Bureau building.

The Council received information from the Information Technology Department regarding the development of performance measures, the 2001-02 annual report, and the procurement and implementation of the enterprise resource planning (ERP) system. The Council approved the increase of other funds spending authority and the ERP system line item and approved a financing proposal to purchase software for the ERP system.

The Council recommends House Concurrent Resolution No. 3001 to authorize the Budget Section to hold legislative hearings required for the receipt of federal block grant funds.

The Council considered and approved 56 requests for increased spending authority or transfers of spending authority which were approved by the Emergency Commission.

COMMERCE COMMITTEE

The Council studied the ability of occupational and professional boards with fewer than 100 licensees to process disciplinary complaints and carry out other statutory responsibilities. The Council makes no recommendation concerning this study.

The Council studied the availability of venture capital, tax credits, and other financing and research and development programs for new or expanding businesses, including an inventory of the programs available, a review of the difference between public and private venture capital programs, an assessment of the needs of business and industry, the research and development efforts of the University System, and a review of the investments of the State Investment Board and the feasibility and desirability of investing a portion of these funds in North Dakota. The Council makes no recommendation concerning this study.

The Council studied the feasibility and desirability of expanding North Dakota's economic development marketing efforts to include international markets and establishing a global marketing division within the Department of Commerce. The Council makes no recommendation concerning this study.

The Council studied the workforce training and development programs in North Dakota, including efforts to recruit and retain North Dakota's workforce, underemployment and skills shortages, current workforce training efforts, and the involvement of New Economy Initiative goals and strategies; and the Work Force 2000 and new jobs training programs and other workforce training and development programs administered by agencies of the state of North Dakota, and the feasibility and desirability of consolidating in a single agency and funding and administration of those programs. The Council recommends Senate Bill No. 2030 to allow the Department of Commerce to retain any money received as subscriptions, commissions, or fees from the department's career guidance and job opportunities Internet web site.

The Council received annual reports from the Department of Commerce Division of Community Services on renaissance zone progress; a report from the Workers Compensation Bureau regarding the bureau's safety audit of Roughrider Industries work programs and a performance audit of modified workers' compensation coverage; and the Securities Commissioner's finding and recommendations resulting from the commissioner's review of policies and procedures relating to access to capital for North Dakota companies, with the goal of increasing North Dakota companies' access to capital investment.

CORRECTIONS COMMITTEE

The Council, with the use of consultant services, studied the facilities and operations of the Department of Corrections and Rehabilitation. The study included an analysis and evaluation of all current facilities used by the department, the future facility needs, the staffing needs of the department, the anticipated need for additional prison beds, and a cost-benefit analysis of the department's current and proposed programs. The Council makes no recommendation concerning this study.

The Council studied the commitment procedures contained in North Dakota Century Code (NDCC) Chapter 25-03.1 and the commitment laws from other

states to determine if North Dakota law sufficiently addresses the treatment needs of controlled substance abusers in this state; the mandatory minimum sentence requirements of NDCC Chapter 19-03.1 and the mandatory minimum sentencing laws from other states and the federal government relating to drug offenses; and the need for legislation to assist in the cooperative efforts of state, local, and federal agencies to combat unlawful drug use and abuse in this state. The Council makes no recommendation concerning this study.

The Council received a report from the Attorney General on the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in this state.

EDUCATION COMMITTEE

The Council studied the manner in which elementary and secondary education will be provided during the ensuing 5, 10, and 20 years, with a focus on current school district structure, reorganization options, the potential for creating alternate administrative units, and the equitable distribution of state aid to school districts. The Council recommends House Bill No. 1033 to require that a student successfully complete at least 21 high school credits before being eligible to receive a high school diploma; Senate Bill No. 2031 to broaden the number of courses that a high school must make available to its students; and House Bill No. 1034 to require the development of long-term plans by school districts.

The Council studied the feasibility and desirability of implementing a teacher compensation package that recognizes four levels of teachers from beginning to advanced and which bases the compensation level for each category on the individual teacher's ability to meet or exceed district standards for content knowledge, planning and preparation for instruction, instructional delivery, student assessment, classroom management, and professional responsibility. The Council makes no recommendation concerning this study.

The Council studied the state and local tax structure for funding elementary and secondary education. The Council makes no recommendation concerning this study.

The Council studied the safety, efficiency, and cost-effectiveness of school district transportation. The Council recommends Senate Bill No. 2032 to appropriate \$50,000 to the Superintendent of Public Instruction for completion of the data envelopment analysis project.

The Council received reports regarding annual school district employee compensation, requests for and waivers of accreditation rules, requests for and waivers of NDCC Section 15.1-21-03, which relates to instructional time for high school courses, and student scores on recent statewide tests of reading and mathematics.

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; and reviewed federal restructuring initiatives, reviewed restructuring of the electric industry in North Dakota, taxation of electric utilities in North Dakota, and regulation of electric cooperatives in North Dakota. The Council reviewed the Lignite Vision 21 program and the history and operation of the Territorial Integrity Act. The Council makes no recommendation concerning this study.

The Council reviewed wind energy as part of its study of electric industry competition and electric suppliers; reviewed 2001 wind energy legislation; and received testimony concerning the extent and development of North Dakota's wind resource. 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 feasibility and desirability of implementing a retirement program for all law enforcement and correctional officers within the state of North Dakota which provides retirement benefits similar to those provided to the members of the Highway Patrolmen's retirement system pursuant to NDCC Chapter 39-03.1. The Council recommends Senate Bill No. 2033 to include peace officers and correctional officers in the National Guard retirement plan.

FAMILY LAW COMMITTEE

The Council studied the feasibility and desirability of state administration of child support, including the fiscal effect on counties and the state. The Council recommends House Concurrent Resolution No. 3002 to provide for a Legislative Council study of loss of tax revenues from flooded property and from previously taxable property that is purchased by tax-exempt entities and of the impact of the tax status on the ability of local communities to provide social services and House Concurrent Resolution No. 3003 to provide for a Legislative Council study of state and local funding obligations for social services.

The Council studied the adoption laws of this state and other states. The Council recommends House Bill No. 1035 to revise the state's version of the Revised Uniform Adoption Act; House Bill No. 1036 to revise laws relating to child relinquishment to identified adoptive parents; Senate Bill No. 2034 to update the state's version of the Uniform Parentage Act; Senate Bill No. 2035 to create a paternity registry; Senate Bill No. 2036 to broaden the class of children eligible for certification as special needs adoption; and House Bill No. 1037 to revise the child-placing agency licensure laws.

The Council studied the medical and financial privacy laws in this state, including the effectiveness of medical and financial privacy laws in other states, the interaction

of federal and state medical and financial privacy laws, and whether current medical and financial privacy protections meet the reasonable expectations of the citizens of North Dakota. The Council recommends House Bill No. 1038 to provide financial privacy definitions of customer and financial institution and to provide for certain financial privacy exceptions; and Senate Bill No. 2037 to limit the information on electronically printed credit card receipts.

GARRISON DIVERSION OVERVIEW COMMITTEE

The Council reviewed the history of the Garrison Diversion Unit Project and received project updates from representatives of the Garrison Diversion Conservancy District, State Water Commission, and United States Bureau of Reclamation concerning project appropriations, the Garrison municipal, rural, and industrial water supply program, the Southwest Pipeline Project, the Northwest Area Water Supply Project, and Bureau of Reclamation activities. The Council also reviewed recent developments affecting the Garrison Diversion Unit Project, including the Dakota Water Resources Act, Garrison Diversion draft reassessment report, Red River Valley water supply study, Devils Lake, Devils Lake litigation, the federal Water Pollution Control Act Section 404 program, and Missouri River issues.

HIGHER EDUCATION COMMITTEE

The Council studied the State Board of Higher Education's implementation of the performance and accountability measures report required by 2001 Senate Bill No. 2041 and received reports from the State Board of Higher Education with respect to the board's progress in establishing and implementing a long-term enrollment management plan. The Council recommends House Bill No. 1039 to provide for the continuation of the continuing appropriation authority for higher education institutions' special revenue funds, including tuition; House Bill No. 1040 to provide for the continuation of the University System's authority to carry over at the end of the biennium unspent general fund appropriations; House Bill No. 1041 to continue the requirement that the budget request for the University System 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 the requirement that the appropriation for the University System include block grants for a base funding appropriation and for an initiative funding appropriation and an appropriation for asset funding; and House Bill No. 1042 to require the University System performance and accountability report to include an executive summary and specific information regarding education excellence, economic development, student access, student affordability, and financial operations.

The Council studied the responsibilities and functions of the College Technical Education Council and the implementation of the workforce training regions 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 department's business plan, annual report, and performance measures, and regarding statewide information technology policies, standards, and guidelines, major information technology projects, and information technology initiatives including the statewide information technology network, the enterprise resource planning system initiative, the geographic information system initiative, and the criminal justice information sharing initiative. The Council also received reports from State Radio Communications on any recommended changes in 911 telephone system standards and guidelines, reports from the Public Safety Answering Points Coordinating Committee regarding city and county fees on telephone exchange access service and wireless service, and reports from the Department of Public Instruction regarding the department's pursuit of grant funds for technology in elementary and secondary education.

The Council recommends House Bill No. 1043 to change the responsibility of establishing a statewide forms management program from the Office of Management and Budget to the Information Technology Department, to allow the department to purchase, finance the purchase, or lease equipment, software, or implementation services only to the extent the purchase amount does not exceed 10 percent of the appropriation for the department for that biennium, change the due date for information technology plans from March 15 to July 15, and abolish the State Information Technology Advisory Committee; Senate Bill No. 2038 to provide that any portion of a record containing plans, security codes, passwords, combinations, or other security-related data used to protect electronic information and government property and to prevent access to computers, computer systems, or computer or telecommunications networks is exempt from the open records requirements; Senate Bill No. 2039 to provide that the policies, standards, and guidelines adopted by the department are not considered rules under the Administrative Agencies Practice Act; Senate Bill No. 2040 to provide necessary changes relating to the Educational Technology Council as the governing entity of the Division of Independent Study; Senate Bill No. 2041 to establish a criminal justice information sharing board and a criminal justice information sharing fund that, subject to legislative appropriation, is available to the department for criminal justice information sharing activities; and Senate Bill No. 2042 to allow the private sector to use kindergarten through grade 12 entities' and higher education institutions' interactive videoconferencing services if videoconferencing services are not available from private sector providers, the offering of videoconferencing services would not inhibit future private sector service, and educational and governmental users are given priority in the use of the videoconferencing services.

The Council studied the technological capacity and needs of the state, including the delivery of library

services by technology and makes no recommendation concerning this issue.

JUDICIARY A COMMITTEE

The Council studied the method of providing legal representation for indigent criminal defendants and the feasibility and desirability of establishing a public defender system. The Council recommends House Bill No. 1044 to transfer from the judicial branch to the Office of Administrative Hearings the responsibility of contracting with and assigning attorneys to provide indigent defense services; House Bill No. 1045 to provide that the state rather than the county is responsible for paying for the costs of providing indigent defense for mental illness commitment proceedings, sexual predator commitment proceedings, and for guardian ad litem services; and House Concurrent Resolution No. 3004 to provide for a Legislative Council study of the state's method of providing legal representation for indigent persons and the feasibility and desirability of establishing a public defender system.

The Council studied the responsibility of clerks of court for restitution collection and enforcement activities. The Council recommends Senate Bill No. 2043 to provide that those county and state offices performing restitution collection and enforcement activities as of April 1, 2001, are to continue to perform those activities; and Senate Bill No. 2044 to require a court, when ordering restitution in insufficient funds check cases, to impose as costs the greater of the sum of \$10 or 25 percent of the amount of restitution ordered and to provide that those costs are to be used by the state's attorney or clerk of district court to offset operating expenses.

The Council studied the commitment procedures for individuals with mental illness. The Council recommends Senate Bill No. 2045 to change from seven to four the number of days within which a preliminary hearing or a treatment hearing is to be held.

The Council reviewed uniform Acts recommended by the North Dakota Commission on Uniform State Laws, including the Revised Uniform Arbitration Act; the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act; the Uniform Foreign Money-Judgments Recognition Act; the Revised Uniform Limited Partnership Act; the Uniform Commercial Code Article 1 - General Provisions; the Uniform Commercial Code, Article 2 - Sales; the Uniform Commercial Code, Article 2A - Leases; the Uniform Commercial Code Articles 3 and 4 - Negotiable Instruments and Bank Deposits and Collections; amendments to Uniform Commercial Code Sections 9-102(a)(5), 9-102(a)(46), 9-304(b), and 9-309; and the Uniform Disclaimer of Property Interests Act.

The Council makes one recommendation as a result of its statutory revision responsibilities. The Council recommends Senate Bill No. 2046 to make technical corrections to the North Dakota Century Code.

JUDICIARY B COMMITTEE

The Council studied trusts for individuals with disabilities. The Council recommends Senate Bill No. 2047 to provide for the formation of self-settled special needs trusts and third-party special needs trusts.

The Council studied educational trusts for children on public assistance. The Council makes no recommendation concerning this study.

The Council studied fees and point demerits for traffic offenses. The Council recommends House Bill No. 1046 to remove the nighttime speed limit on paved two-lane highways, resulting in a 65 mile per hour speed limit. The Council recommends House Bill No. 1047 to establish a \$5 fee for each mile per hour over the speed limit.

The Council studied the feasibility and desirability of creating a centralized process for administering noncriminal traffic violations. The Council makes no recommendation concerning this study.

The Council received a report from the Department of Transportation on the effectiveness of this state's law that prevents certain uninsured motorists from taking action against a secured person for noneconomic loss.

The Council studied incentive programs as a way of keeping elk in this state and providing increased opportunities to landowners, hunters, and the general public. The Council recommends Senate Concurrent Resolution No. 4002 urging Congress to fund the cost of depredation, personal injury damage, and property damage caused by elk escaping from the Theodore Roosevelt National Park.

The Council studied issues relating to resident and nonresident hunting in this state. The Council recommends Senate Bill No. 2048 to limit nonresident waterfowl hunters based on total hunting pressure; Senate Bill No. 2045 to limit nonresident waterfowl hunters through two consecutive 10-day blocks with a limit of 10,000 hunters per block; House Bill No. 1048 to require guides and outfitters to be tested on state and federal laws on the hunting of wild game; House Bill No. 1049 to require the director of the Game and Fish Department to keep proprietary information collected from guides and outfitters confidential; and House Bill No. 1050 to provide for comprehensive licensing of guides and outfitters by the Game and Fish Department.

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Council received and accepted 142 audit reports prepared by the State Auditor's office and independent accounting firms. The Council approved changes in the process of audit recommendation followup that includes the sending of correspondence on a case-by-case basis to state agencies requesting an explanation for noncompliance with audit recommendations. Among the audit reports accepted by the Council were four performance audits and evaluations--service payments for elderly and disabled (SPED), Workers Compensation Bureau, Job Service North Dakota, and the Veterans Home. The Council requested the Attorney General's office to

investigate possible violations of state law as detailed in the performance audit report of the Veterans Home.

The Council recommends House Bill No. 1051 to provide that draft audit reports are confidential and exempt from open records requirements, but a state agency may review the State Auditor's office audit recommendations before the report is made public.

The Council reviewed information on guidelines relating to the financial reporting status of component units established by state institutions; reviewed information relating to state agencies and institution's procurement practices; and received information relating to the Department of Human Services accounts receivable writeoffs, the Information Technology Department's development of performance measures and status of projects, and the status of pension fund assets administered by the Public Employees Retirement System and Retirement and Investment office.

LEGISLATIVE MANAGEMENT COMMITTEE

The Council reviewed legislative rules and recommends reestablishment of the Joint Constitutional Revision Committee, which will coordinate which election measures should be placed on the ballot and the order of placement on the ballot. The Council recommends the number of copies of introduced bills printed be reduced from 500 to 350 and that the number of copies of engrossed bills printed be increased from 100 to 200. These recommendations reflect less demand for bills from the bill and journal room but increased demand for copies of engrossed bills.

The Council recommends Senate Bill No. 2050 to require the Governor to receive a bill presented during normal business hours. The bill also allows the Governor to coordinate delivery with each house if the Governor is expected to be outside the state or if bills are expected to be delivered outside normal business hours.

The Council tested five different computers as replacement computers for legislators. For reasons listed in this report, the Council selected IBM ThinkPad notebook computers for legislators.

The Council reviewed the reasons e-mail files have been limited to 50 megabytes across state government and recommends that the quota applicable to state officials and employees also apply to legislators. The quota will be removed from December through May in recognition of the volume of e-mail received by legislators during the legislative session.

The Council approved subscription fees payable for receiving sets of legislative documents from the bill and journal room.

The Council reviewed usage of stationery by legislators and recommends that legislators have the option of receiving none or choosing 250 or 500 sheets of stationery.

The Council reviewed employee positions and pay during the 2001 legislative session. For the 2003 legislative session, the Council recommends employment of the number of employees authorized and employed

during the 2001 session--34 Senate employees and 40 House employees. The Council also recommends a 5 percent increase in daily compensation for those employees, based on the pay increases approved for state government in 2001 and 2002.

The Council reviewed bids to provide certain services to the Legislative Assembly and recommends acceptance of the bid by one contractor to provide secretarial service, telephone message service, and bill and journal room service during the 2003 legislative session.

The Council approved the agenda for the Organizational Session. The Council recommends Senate Bill No. 2051 to update the statutory requirements for the agenda for the organizational session, in light of the customary agendas over the past few sessions.

The Council designated the days when special reports are to be made to various committees of the Legislative Assembly. Agricultural commodity groups are to report to the Agriculture Committees on Friday, January 10. The Commissioner of Commerce is to report to the Industry, Business and Labor Committees on Monday, January 13. The Labor Commissioner is to report to the Judiciary Committees on Monday, January 13.

LEGISLATIVE REDISTRICTING COMMITTEE

The Council studied legislative redistricting and developed a legislative redistricting plan for use in the 2002 primary election. The Council recommended Senate Bill No. 2456 (2001) that established 47 legislative districts and repealed the legislative redistricting plan that was in effect, required the Secretary of State to modify 2002 primary election deadlines and procedures if necessary, and provided an effective date of December 7, 2001. The Legislative Assembly at a special session in November 2001 adopted Senate Bill No. 2456.

REGULATORY REFORM REVIEW COMMISSION

The Council studied this state's telecommunications law, including the creation of a state universal service fund and reviewed the effect of federal legislation on this state's law. The Council recommends House Bill No. 1052 to provide for expenditures of funds collected by the Public Service Commission under the performance assurance plan with the regional bell operating company. The Council recommends House Bill No. 1053 to extend the Regulatory Reform Review Commission to 2005.

TAXATION COMMITTEE

The Council studied special assessments and property tax assessment and abatements, including valuation of subsidized housing and the homestead tax credit for senior citizens. The Council recommends House Bill No. 1054 to revise eligibility determination under the homestead property tax credit. The bill establishes income limits in five income categories based on the

federal poverty level as determined by the United States Department of Health and Human Services. The Council also recommends Senate Bill No. 2052 to allow imposition of city flood control special assessments against private commercial structures on state land; and Senate Bill No. 2053 to make uniform use of phrases in special assessment laws relating to "probable cost of the work" and "probable cost of the improvement."

The Council studied compliance and jurisdiction issues under tobacco, alcohol, and fuels tax laws. The Council makes no recommendation concerning this study.

The Council studied corporate income tax laws. The Council recommends Senate Bill No. 2054 to eliminate

the federal income tax deduction for state corporate income tax purposes and to replace existing graduated corporate income rates with a corporate income tax flat rate of 6.84 percent, except that for corporations filing under the water's edge election, the flat rate is 9.9 percent.

The Council studied property tax assessment and valuation of agricultural property. The Council recommends House Bill No. 1055 to incorporate an effective tax rate calculation in the capitalization rate used for valuation of agricultural property. The bill phases in use of the effective tax rate over four years.

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, 28-32-17, and 28-32-18. 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.

The Legislative Council delegated to the committee its authority under NDCC Section 28-32-10 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 28-32-42 to receive notice of appeal of an administrative agency's rulemaking action.

Committee members were Representatives LeRoy G. Bernstein (Chairman), Duane DeKrey, William R. Devlin, Mary Ekstrom, Bette Grande, Nancy Johnson, Kim Koppelman, Jon O. Nelson, Darrell D. Nottestad, Sally M. Sandvig, Blair Thoreson, and Dwight Wrangham and Senators John M. Andrist, Thomas Fischer, Layton Freborg, Jerry Klein, Deb Mathern, David O'Connell, and Bob Stenehjem.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2002. The Council accepted the report for submission to the 58th 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 Chapter 28-32. This continues the rules review process initiated in 1979.

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

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 the 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 28-32-09. 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 28-32-03, 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 1,417 rules sections and 2,016 pages of rules that were changed from December 2000 through November 2002. Although the number of sections affected was substantially fewer than in the previous biennial period, the number of pages of rules was slightly increased. Table A at the end of this report 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
December 2000 - November 2002	1,417

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, with changes 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
December 2000 - November 2002	2,016

Voiding of Rules

Under NDCC Section 28-32-18 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 28-32-11.

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.

COMMITTEE ACTION ON RULES REVIEWED

State Water Commission and Department of Transportation

Under 1999 House Bill No. 1310 the State Water Commission and Department of Transportation were given joint rulemaking authority to establish stream crossing standards to govern highway construction and permit the natural flow and drainage of surface waters and relieve political subdivisions of liability for damage caused by water detained at a highway crossing constructed in accordance with the stream crossing standards. Representatives of political subdivisions and other interested parties expressed concerns about the necessity and expense of replacing culverts on county and township roads, who would be qualified to do hydrologic analysis of stream crossing compliance, and the effect of the standards on political subdivision immunity from damages in civil actions. After further discussions among concerned parties and the affected agencies, the committee agreed with the State Water Commission and Department of Transportation on further amendments to the rules to make clear that compliance with the stream crossing standards rules is optional for political subdivisions, but political subdivisions that comply with the rules are protected by statutory provisions for immunity from civil actions. An amendment was also agreed upon relating to design standards based on flood recurrence interval for township road culverts to provide a 10-year township road culvert flood recurrence interval standard.

Department of Financial Institutions

The Department of Financial Institutions adopted rules to implement 2001 legislation governing activities of deferred presentment service providers or "payday" lenders. One of the rules prohibited payday lenders from advertising "low rates" or using other specified phrases in advertising and prohibited advertising in a false,

misleading, or deceptive manner. Committee members expressed concern that by prohibiting use of specific phrases, the limitations of the rule could be avoided by carefully worded advertising that would still be misleading. Representatives of the North Dakota Newspaper Association and North Dakota Broadcasters Association opposed the advertising rule on several grounds, including potential violation of the constitutionally protected right to free speech. The committee determined that statutory authority exists to prohibit lenders from engaging in unfair or deceptive acts, practices, or advertising and that the rule in question might be interpreted to limit that enforcement authority. The committee approved a motion to void the deferred presentment service provider advertising rule. The department did not petition for reconsideration of the committee action.

Superintendent of Public Instruction

The Superintendent of Public Instruction adopted rules relating to a variety of topics, including issuance of licenses for school administrators. Representatives of three groups representing school administrators opposed the rules. Representatives of the Department of Public Instruction suggested it would be more convenient for licensees to obtain administrator licenses from the Education Standards and Practices Board, where they now obtain teaching licenses, and that the application process and effective dates of the two types of licenses could be unified. After further discussions among Department of Public Instruction representatives and concerned parties, the committee agreed with further rule amendments proposed by the Superintendent of Public Instruction to make clear that school administrator licenses will be issued by the Department of Public Instruction.

Education Standards and Practices Board

The Education Standards and Practices Board adopted rules relating to several aspects of teacher licensure. One rule change substituted state approval for college approval of the curricula for college elementary teacher education programs. Committee members

questioned this change and whether it was coordinated with higher education institutions' programs. The committee approved a motion to carry over consideration of these issues, and upon receiving further information on these issues, the committee took no further action.

Committee Consideration

The committee considered a bill draft based on 2001 Senate Bill No. 2258, which was defeated. The bill draft would have imposed a limitation on occupational and professional licensing boards to prohibit license fee increases by administrative rule by more than 10 percent during any two-year period. It was suggested this would limit fee increase authority by rule and would require larger fee increases to be introduced as legislation and reviewed by the full Legislative Assembly. Concerns were expressed that establishing a maximum fee increase would serve as an incentive to take the maximum fee increase and that the rule may have a harsher impact on smaller occupational and professional licensing boards and commissions that have fewer members and smaller budgets. The committee does not recommend the bill draft.

The committee considered statutory provisions and legal interpretations regarding when rulemaking by agencies is optional or mandatory. Committee members expressed concern that when legislation requires rulemaking to be administered and implemented, inaction by an agency would amount to an "administrative veto" of legislation. It was the apparent consensus of the committee that there is no blanket approach that would adequately address all possible agency rulemaking situations and statutory provisions. It was also the apparent consensus of committee members that members of the Legislative Assembly should consider whether mandatory rulemaking provisions should be included in each bill under standing committee consideration.

CONCLUSION

The committee makes no recommendation regarding statutes relating to administrative rules.

TABLE A

STATISTICAL SUMMARY OF RULEMAKING							
December 2000 through November 2002				Supplements 258 through 281			
Agency	Amend	Create	Supersede	Repeal	Special	Reserved	Total
State Board of Accountancy	10						10
Office of Management and Budget		10					10
Board of Addiction Counseling Examiners		20		20			40
Aeronautics Commission	2	1		1			4
Agriculture Commissioner	1						1
Board of Examiners on Audiology and Speech-Language	1						1
Department of Banking and Financial Institutions	4	19					23
State Board of Chiropractic Examiners	16	5		5			26
State Board of Dental Examiners	7						7
State Electrical Board	18						18
State Board of Registration for Professional Engineers and Land Surveyors		4					4
State Board of Cosmetology	8						8
State Department of Health	65	38		10	9		122
Highway Patrol	10	1					11
Industrial Commission	26	1		1			28
Insurance Commissioner	64	29		7	3		103
Board of Animal Health		23					23
State Board of Massage	1	15					16
State Board of Medical Examiners	10	2		2			14
State Board of Nursing	48	11		6			65
Pesticide Control Board	2			4			6
State Board of Pharmacy		14					14
State Plumbing Board	1						1
State Board of Psychologist Examiners	2						2
Department of Public Instruction	48	37		20			105
Education Standards and Practices Board	28	3					31
Public Service Commission	39	12					51
North Dakota Racing Commission	12	5		1			18
Real Estate Commission	1	13					14
Real Estate Trust Account Committee Grants		5					5
Public Employees Retirement System	21	15		7			43
Secretary of State	5			5			10
State Seed Department	49	1		1			51
Department of Human Services	84	31		97	2		214
Tax Department	49	23		30			102
Teachers' Fund for Retirement Board of Trustees	3	1		1			5
Board of Veterinary Medical Examiners	2						2
State Water Commission	1	6					7
State Board of Water Well Contractors	13	8					21
Workers Compensation Bureau	25			1			26
Board of Clinical Laboratory Practice	8	1		6			15
Board of Counselor Examiners	2	2					4
State Gaming Commission	85						85
State Seed Arbitration Board		8		4			12
Board of Athletic Trainers		13					13
Crop Protection Product Harmonization and Registration Board		12					12
Department of Commerce		14					14
Sections Affected	771	403	0	229	14	0	1,417
Grand Total All Sections	1,417						

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

North Dakota Century Code (NDCC) 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.

The Legislative Council referred to the commission House Concurrent Resolution No. 3037 (2001), which provided for a study of the feasibility and desirability of creating cost-sharing mechanisms for the unexpected discovery of cultural and paleontological resources within local road projects. In addition, during the 2001-02 interim, the commission focused on various other areas of interest, which are 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, one citizen member appointed by the North Dakota School Boards 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, 2001. Commission members were Representatives Scot Kelsh (Chairman) and Kim Koppelman; Senators Dennis Bercier and Herb Urlacher; North Dakota League of Cities representatives Bob Frantsvog and Devra Smestad; North Dakota Association of Counties representatives Les Korgel and Maxine Olson-Hill; North Dakota Township Officers Association representative Donny L. Malcomb; North Dakota Recreation and Park Association representative Randy Bina; North Dakota School Boards Association representative Jon Martinson; and Governor John Hoeven.

The commission submitted this report to the Legislative Council at the biennial meeting of the Council in November 2002. The Council accepted the report for submission to the 58th Legislative Assembly.

DISCOVERY OF CULTURAL AND PALEONTOLOGICAL RESOURCES STUDY Background

In 1999 the Legislative Assembly considered, but did not pass, House Bill No. 1236, which would have established a cost-sharing method to assist counties, cities, and townships in paying the additional costs associated with the discovery of cultural resources during highway construction or maintenance. The bill provided that the

additional cost for any additional action, including an archaeological excavation or study, must be shared in the proportion of 25 percent to the county, city, or township; 25 percent to the State Historical Society; and 50 percent to the Department of Transportation.

North Dakota Law

Although there is no North Dakota law regarding cost-sharing or funding mechanisms for the unexpected discovery of cultural or paleontological resources, the Legislative Assembly has enacted legislation protecting paleontological resources. North Dakota Century Code Chapter 54-17.3 authorizes the State Geologist to issue permits to investigate, excavate, collect, or record paleontological resources. A "paleontological resource" means "any significant remains, trace, or imprint of a plant or animal that has been preserved by natural causes in earth materials and the localities in which they are found."

The State Geologist is required to notify the director of the State Historical Society of all quaternary paleontological finds reported to the State Geologist which potentially or actually contain cultural resources. Any paleontological resource found or located upon any land owned by the state or a political subdivision may not be destroyed, defaced, altered, removed, or disposed without the approval of the State Geologist. In addition, the state and political subdivisions are required to cooperate with the State Geologist in identifying and implementing any reasonable alternative to destruction or alteration of any paleontological resource.

North Dakota Century Code Section 54-17.4-09.1 provides for a fossil excavation and restoration fund. All funds received by the Geological Survey for the excavation and restoration of fossils must be deposited in the fund. The balance in the fund as of April 25, 2002, was \$127,000.

North Dakota Century Code Section 55-02-07 provides that any "historical or archaeological artifact or site that is found or located upon any land owned by the state or its political subdivisions or otherwise comes into its custody or possession and which is, in the opinion of the director of the state historical society, significant in understanding and interpreting the history and prehistory of the state, may not be destroyed, defaced, altered, removed, or otherwise disposed of in any manner without the approval of the state historical board." The director of the State Historical Board is required to provide the governing official of the state or political subdivision written direction for the care, protection, excavation, storage, destruction, or other disposition of the significant artifact or site within 60 days of written notification by the appropriate governing official's desire, need, or intent to destroy, alter, remove, or otherwise dispose of a significant artifact or site. The state and its political subdivisions are required to cooperate with the director in identifying and implementing any reasonable

alternative to destruction or alteration of any historical or archaeological artifact or site significant in understanding and interpreting the history and prehistory of the state before the State Historical Board may approve the demolition or alteration.

A "cultural resource" is defined as "prehistoric or historic archeological sites, burial mounds, and unregistered graves."

North Dakota Century Code Section 55-10-09 requires the state and its political subdivisions to cooperate with the director of the State Historical Society in the preservation of historic and archaeological sites.

Testimony and Commission Considerations

The commission received testimony from representatives of counties indicating there have been incidences in which a local road project was abandoned as a result of the unexpected discovery of cultural or paleontological resources. The testimony suggested that delays associated with mitigating an unexpected discovery of cultural or paleontological resources, as well as the cost of mitigation, can be a significant burden on a local government because of the limited resources of some local governments.

A representative of the North Dakota Geological Survey testified that significant fossil discoveries during road projects are very rare because significant fossil sites are generally concentrated in limited areas of the state and usually can be easily identified before a road project is commenced. In addition, because fossils are usually found in layers, mitigation of fossil finds is generally inexpensive and not very time-consuming.

A representative of the Geological Survey testified that the Geological Survey will excavate fossil discoveries on political subdivision road projects at no cost to the political subdivision. With improved communication between political subdivisions and the Geological Survey, most problems associated with the discovery of paleontological resources could be avoided.

A representative of the State Historical Society testified that federal law applies to most projects where cultural resources are discovered. The testimony indicated that unexpected discoveries of cultural resources are more likely to result in significant mitigation costs to political subdivisions than discoveries of paleontological resources.

A representative of the Department of Transportation testified that unexpected discoveries of cultural or paleontological resources are infrequent, especially when adequate preconstruction investigations are conducted. Because the Department of Transportation distributes highway funding to political subdivisions in amounts exceeding that required by federal law, the policy of the department is to maximize the benefit of federal transportation aid by using it for construction rather than preconstruction investigations and resource mitigation.

Commission members generally agreed that the dialogue during the interim helped improve communication among political subdivisions, the Department of Transportation, the Geological Survey, and the State Historical Society and that with improved

communication, unexpected discoveries of significant cultural or paleontological resources can be avoided.

Conclusion

Because there appear to be infrequent discoveries of cultural and paleontological resources during local road projects, particularly when the appropriate entities communicate well and adequate preconstruction investigations are conducted, and because any cost-sharing mechanism would result in reductions in funding in other areas, the commission makes no recommendation with respect to this study.

COUNTY 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 2 percent more in 1995 and up to 2 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 could be levied by cities, counties, and park districts would have been tied to the consumer price index. In 1997 the 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, which 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.

During the 1999-2000 interim the Advisory Commission on Intergovernmental Relations again addressed consolidation of mill levies. The commission recommended House Bill No. 1031, which provided for the consolidation of several park district special levies into the park district general fund levy. The Legislative Assembly adopted House Bill No. 1031.

Testimony and Commission Considerations

The commission received information from a representative of the Tax Commissioner indicating the consolidation of park district mill levies had little effect on the 2001 taxes levied by park districts and that no serious problems were encountered in implementing the consolidation of park district mill levies.

The commission received a request from representatives of the North Dakota Association of Counties to consider consolidating several special county mill levies into the county general fund levy. It was contended that consolidating the special levies into the general fund levy would provide boards of county commissioners with needed flexibility while not increasing the total number of mills counties could levy.

Opponents of consolidating county special fund levies argued that consolidation provides county commissioners with the opportunity to increase special levies to the maximum amount and redirect the designated funds to the general fund.

The commission considered a bill draft that allowed a board of county commissioners to adopt a preliminary resolution to consolidate several special county levies into the county general fund levy. The bill draft provided the voters of the county with the opportunity to refer the question of consolidating levies to a vote of the qualified electors of the county. The bill draft implemented a general fund mill levy cap of 134 mills.

Recommendation

The commission recommends House Bill No. 1024 to consolidate several special county levies into the county general fund levy that may not exceed 134 mills and to allow the voters of a county to refer the question of consolidating the levies to a vote of the qualified electors of the county.

REVENUE SHARING AND PERSONAL PROPERTY TAX REPLACEMENT

Testimony and Commission Considerations

The commission received a report regarding the history and current status of revenue sharing and personal property tax replacement. 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: (1) 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); (2) all revenue in the fund would be allocated through a continuing appropriation so that future legislative action would not be required; (3) 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; (4) direct allocations from the state would be eliminated for all entities except counties and cities; (5) 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; (6) all revenues would go into an entity's general fund for appropriate use as directed by the governing board; (7) 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; and (8) 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, and within the groupings, the revenue would be allocated strictly by relative population.

House Bill No. 1019 was enacted with a delayed effective date of January 1, 1999, to minimize the impact of the new formula on the 1997-99 state budget.

Representatives of the North Dakota Association of Counties and the North Dakota League of Cities testified that as a result of the 2000 federal decennial census, the population groupings are in need of revision. The representative of the counties and the cities submitted proposals for revision of the population groupings.

The commission considered a bill draft that reduced the number of rural county groupings to two, eliminated the fixed population breakpoints, and used a formula that incorporated a base plus a population multiplier in each of the two categories.

The commission considered a bill draft that revised the city groupings to include a grouping for cities of 80,000 or more. The bill draft also revised the other city groupings to adjust for the shifting of cities from one population grouping to another.

Recommendation

The commission recommends House Bill No. 1025, which consolidates the two bill drafts relating to revising the state aid distribution formula for cities and counties to account for population changes resulting from the 2000 federal census.

TOBACCO EDUCATION AND CESSATION

The commission received an update regarding the implementation and success of tobacco education and cessation programs. It is estimated that tobacco use is the leading preventable cause of death and disability in the state, costing the state \$193 million annually in direct medical expenditures and \$158 million annually in smoking attributable productivity costs. In 2001 the Legislative Assembly adopted Senate Bill No. 2380, which appropriated \$250,000 from the community health

trust fund to provide grants to cities and counties on a dollar-for-dollar matching basis for city and county tobacco education and cessation programs.

A representative of the State Department of Health informed the commission that three entities have implemented programs using grant funds to address tobacco cessation, and two other entities had applied for funding. The department is monitoring the success of the programs to determine which methods are most effective.

Conclusion

The commission makes no recommendation with respect to tobacco education and cessation programs.

HOMELAND SECURITY

The commission received a report from the director of the North Dakota Division of Emergency Management regarding homeland security and emergency management. Because an emergency management infrastructure already exists, the Governor elected to use the emergency management structure in the state as the organizational base for homeland security. One of the primary efforts being undertaken with respect to homeland security is using available federal funds to address public health issues such as bioterrorism because a bioterrorism outbreak thousands of miles from North Dakota could significantly impact this state due to the mobile population.

Conclusion

The commission makes no recommendation with respect to homeland security.

E-COMMERCE TAXATION

The commission received a report on the status of taxing of e-commerce. Testimony was received from a representative of the Tax Commissioner regarding the status of state and federal law governing 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 moratorium has since been extended an additional two years.

In 2001 the Legislative Assembly adopted Senate Bill No. 2455, the Simplified Sales and Use Tax Administration Act. Adoption of the legislation included North Dakota as a member state in multistate discussions regarding implementation of model sales and use tax agreements. However, any proposed changes in tax law must be approved by legislative action.

Conclusion

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

PUBLIC SCHOOL FUNDING AND TAXATION

The commission received a report from a representative of the Tax Commissioner regarding school district

taxable values and taxes levied from 1987 through 2001. The report indicated the average mill rate levied by school districts has not changed significantly over the last decade.

Conclusion

The commission makes no recommendation with respect to public school funding and taxation.

TOOL CHEST LEGISLATION UPDATE

In 1993 the Legislative Assembly adopted House Bill No. 1347, which is often referred to as the "tool chest" for local government. The legislation streamlined the joint powers process, clarified home rule powers, created procedures for reorganizing local county governments, and established a citizens' advisory process to encourage the periodic examination of city and county government structure.

The commission received a report from a representative of the North Dakota Association of Counties regarding the use of the "tool chest" components. Through the use of the procedures to change the structure of county government and the use of home rule powers, 22 counties have implemented some form of structural change since 1993. In addition, 17 counties are either considering the redesignation of elective offices as appointive or combining offices.

Conclusion

The commission makes no recommendation with respect to the "tool chest" legislation.

WIND ENERGY

The commission received a report from a representative of the National Conference of State Legislatures regarding the generation of electricity through wind energy. Wind energy development in the United States began to grow in the 1980s in California through a highly subsidized program implemented as a result of environmental concerns. If an adequate transmission system were available, North Dakota could produce enough electricity through wind generation to serve 250 million people. However, because electricity is transmitted through a grid system and the transmission capabilities are limited, North Dakota energy generators are relatively constrained with respect to selling electricity to large out-of-state markets.

The regulations relating to siting of wind energy facilities generally are the same as those with respect to siting of other electric generation facilities. In addition to state regulation, local government zoning regulations often impact the siting of wind energy facilities. The most common objections to the siting of wind turbines are the visual effect of the turbines and avian concerns.

Conclusion

The commission makes no recommendation with respect to wind energy.

AGRICULTURE COMMITTEE

The Agriculture Committee was assigned three studies. Section 1 of House Bill No. 1338 directed a study of issues related to genetic modification of (transgenic) products, including impacts on health, the environment, the food supply, product labeling, and actions by other jurisdictions regarding experimental medicine and research, and the promulgation of accurate information regarding transgenic efforts that exist or are expected to exist in the near future. In assigning this study to the committee, the Legislative Council limited the study to genetic modification of agricultural products. Section 1 of Senate Bill No. 2282 directed a study of methods to encourage production and consumption of ethanol. Section 1 of House Bill No. 1390 directed a study related to the use of biodiesel fuel in this state. The chairman of the Legislative Council also directed a study related to grain shipping rates.

The committee also received a report from the State Seed Commissioner regarding the regional, national, and international status of genetically enhanced or modified seeds and crops and a report from the State Board of Agricultural Research and Education regarding ongoing research activities and expenditures.

Committee members were Senators Terry M. Wanzek (Chairman), Bill Bowman, Duane Mutch, Ronald Nichols, and Harvey Tallackson and Representatives James Boehm, Michael Brandenburg, Thomas T. Brusegaard, April Fairfield, Rod Froelich, C. B. Haas, Joyce Kingsbury, Edward H. Lloyd, Phillip Mueller, Jon O. Nelson, Eugene Nicholas, Dennis J. Renner, Earl Rennerfeldt, Arlo E. Schmidt, and Ray H. Wikenheiser.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2002. The Council accepted the report for submission to the 58th Legislative Assembly.

TRANSGENIC PRODUCTS STUDY

Background

Transgenic agricultural products represent the culmination of thousands of years of natural and human intervention in the food production process. Yeasts, molds, and bacteria have been used to make fermented foods and to preserve foods for centuries. One example of this is turning milk into cheese. Occurrences that were not capable of being sufficiently explained in the past have now given rise to a whole range of new disciplines. Plant, animal, and microbial biology, biochemistry, and computer science have been linked in the new field of biotechnology. Independently and together, the disciplines promise opportunities and challenges that include the prevention of plant and animal diseases, the control of insects without the use of chemical pesticides, increased livestock productivity, enhanced food quality, reduced environmental degradation, and a host of other outcomes that have not yet been conceived.

Genetic Engineering

Plants and animals are made up of millions of cells, each of which has a nucleus. Inside each nucleus are strings of deoxyribonucleic acid (DNA). The DNA molecules, which are made up of units called genes, contain all the information needed by the cells to create an organism. In the breeding of plants and animals, variety is achieved by having the breeder select from the genetic traits that already exist within a species' gene pool. Creativity is, however, limited by nature. One type of rose can cross with a different type of rose. However, a rose will never naturally cross with a mouse.

When creativity is governed by the possibilities of science, limitations are less defined. Through genetic engineering, genes from one species can be inserted into another species. A gene from an arctic fish such as the flounder can be taken and spliced into a tomato or into a strawberry to make that fruit frost-resistant.

Transferring DNA is accomplished by several methods, including the direct injection of cells with DNA using a special gun or insertion of DNA into specially modified bacteria or viruses that carry it into the cells they infect. Regardless of the method by which it is accomplished, the transference of DNA from one organism to another constitutes genetic engineering and any plant or animal that has been modified to contain DNA from an external source is called transgenic.

Genetic engineering has enabled the development of drugs such as insulin for diabetics and tissue plasminogen activators for heart attack victims. Animal drugs like the growth hormones bovine or porcine somatotropin are being produced by bacteria that have received the appropriate human, cow, or pig gene. Through genetic engineering, genes that are missing or not functioning properly have been identified and replaced. Because of this, treatment regimens are in place for various immune system defects. Presently, gene therapy is also at the clinical trial stage with respect to the treatment of malignant brain tumors, cystic fibrosis, and HIV.

Genetic engineering has produced transgenic plants that are herbicide-tolerant, that are resistant to insects and viruses, and that can produce modified fruits or flowers. Transgenic animals are being developed and raised to help researchers diagnose and treat human diseases. Because companies have designed and are testing transgenic mammals, products such as insulin, growth hormone, and tissue plasminogen activators that are currently produced by the fermentation of transgenic bacteria will soon be available from the milk of transgenic cows, sheep, and goats.

Need for Transgenic Foods

Traditional agricultural technologies have allowed the survival of the current world population using a finite land base. However, expected increases in the world's population make it uncertain whether traditional technologies will be able to meet the food demands of the future world population. Through genetic engineering,

the potential exists not only to increase food production but also to enable adequate food production in regions of the world which now have only marginal food production capabilities.

Regulation

As with all new technologies, genetic engineering raises questions regarding the morality of the activity, the balance of benefits and risks, and the appropriate level of public accountability. Genetically engineered products are regulated by a number of federal agencies. Food products are regulated by the Food and Drug Administration under the Food, Drug, and Cosmetic Act. Pesticide products are regulated by the Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act. Plant pests are regulated by the Department of Agriculture under the Plant Pest Act and the Plant Quarantine Act. Internationally, the United States is working on several fronts to bring about the harmonization of regulatory approaches for these products. These efforts include bilateral environmental consultations with the Commission of the European Union and establishment of a permanent technical working group on biotechnology and the environment. There are also informal meetings with representatives of the Commission of the European Union and key trading partners. In addition the United States is participating formally and informally in international efforts to harmonize regulatory approaches for these products.

Moratorium

In 2001 the Legislative Assembly considered placing a moratorium on the commercial release of transgenic wheat. Concerns were raised that such a product would detract from value-added agricultural processing ventures, that it would not be accepted by foreign wheat buyers, and that because other wheat-producing countries such as Canada do not support its commercial release, the United States, and particularly North Dakota, would be left with an unmarketable product. The Legislative Assembly opted instead to further examine whether a moratorium would be appropriate.

Scientific Advances Through Biotechnology

The committee was informed that biotechnology has already produced significant advances in health care, in industry, in environmental sectors, and in agriculture. Because of the human genome project, promising research is being conducted with respect to gene therapy, cell regeneration, customized drugs, and veterinary applications. Industrial and environmental biotechnology is being used to develop innovative manufacturing processes that will reduce dependence on fossil fuels and that will reduce development expenditures. Biotechnology is converging, especially in the areas of health care and agriculture, to provide plant-made pharmaceuticals, plant-made polymers, methods for the environmental remediation of waste sites, and a host of defense applications. It is also improving agronomic performance by reducing dependence on pesticides, improving

efficiency and yield, and by providing farmers with more options regarding the planting and raising of crops.

Products already on the market offer characteristics such as disease resistance, pest resistance, and herbicide tolerance. These characteristics enable farmers to reduce chemical usage, reduce labor costs, and improve overall efficiency. Squash, papaya, sweet potatoes, rice, corn, and casava have been enhanced with the plant equivalent of a vaccine that guards against diseases and eliminates the need for insecticides. Corn, cotton, and potatoes are among the new insect-resistant crops. *Bacillus thuringiensis*, a common soil bacterium used widely in a topical form by organic farmers, can now be genetically engineered into crops. Such crops have increased yields by up to 15 percent and decreased pesticide use by over 50 percent.

In the area of industrial biotechnology, biological systems such as enzymes are used to improve industry efficiencies, reduce environmental impacts, reduce dependence on fossil fuels, and reduce the effects of global warming. Industrial biotechnology has spawned products such as spider silk. Spider silk comes from goats that have been genetically engineered to produce a particular enzyme in their milk. The product can be synthesized out of the milk and spun into a silk-like fabric which, when woven together, has characteristics that are much more substantial than kevlar. Even though kevlar is traditionally used in bulletproof vests, spider silk is much more effective at stopping bullets.

Food production is one of the driving forces behind biotechnological advancements. In 1928 the American farmer produced an average of 26 bushels of food per acre. Today, that number has increased to 136 bushels. The challenge is to produce more food using less land, less water, and fewer chemicals. By the year 2050 the population of the earth is predicted to exceed 9 billion. The land necessary to feed that many people at today's rate of production is not available. Consequently, the alternative is to obtain higher levels of productivity from the land that is available. Since biotechnology allows the raising of crops that have increased resistance to pests, disease, acidity, drought, flooding, and salinity, it results in increased yields, reduced inputs, increased efficiency, and improved grower choices. It also promotes conservation tillage, water quality protection, and soil conservation.

There is a recognition on the part of entities involved in the advancement of biotechnology that in order for the science to move forward, it has to work and it has to be safe. Markets have to exist for biotechnology products and the public has to understand the promise of biotechnology.

Biotechnology and the Food Industry

Having the desire to protect hundred-year-old brands to which consumers are loyal, the food industry determined it needs assurances that every ingredient going into its brand-name products is safe and wholesome. As a result the industry has been involved in very comprehensive reviews of biotechnology and of the regulatory

framework. The area the food industry sees the greatest level of participation is that involving the health and nutritional benefits of biotech foods.

Overview of biotech food products is provided by the United States Food and Drug Administration (FDA). The FDA requires the completion of a very comprehensive checklist, so that it can be assured there has been a complete evaluation pertaining to the source of every gene or protein. The FDA ensures that consideration is given to toxicity, nutritional profiling, chemical composition, allergenic potential, and antibiotic resistance.

The labeling policy of the FDA is based on the premise that biotech products are no different from their traditional counterparts. The FDA has struggled, however, with how a label could indicate that a product has been modified through biotechnology without making the consumer think that the food has been changed compositionally. Because consumers have indicated that such a label does not exist, the issue of labeling has continued to be debated. Meanwhile, the FDA has introduced voluntary labeling guidelines. Though not yet complete, these guidelines are designed to ensure that claims of nonbiotech foods are truthful and that such claims do not mislead consumers. The proposed guidelines include criteria that must be followed for a company to make a nonbiotech claim. The presumption is that such a claim may not be made unless it is supportable.

The food industry also is dealing with issues of traceability because consumers want assurances that the source of a particular food or ingredient can be identified. In reality, however, labeling is not likely to accomplish this goal. While whole products such as meat can be sourced with relative ease, the components of other products that consist of soy flour, corn, and similar ingredients require a system other than that which is currently in place. The emerging issue involves the mechanics of identity preservation. Agriculture in the United States is conducted on a massive scale and, therefore, by its very nature poses a significant challenge to maintaining or preserving identity. To date, identity-preserved crops are generally produced on a small scale and at a premium price. Tracing such a product through a specially designed system is manageable. Options for providing traceability on a large scale still need to be developed and discussed.

Biotechnology and the Wheat Industry

Twenty-six percent of the United States corn crop is transgenic. Sixty-eight percent of the United States soybean crop is transgenic. Whereas corn exports have in recent years seen a nominal increase, soybean exports have increased by 26 percent. Meanwhile, wheat exports, none of which are transgenic, have declined by 17 percent.

Grower research conducted in Minnesota, Montana, North Dakota, and South Dakota found that 74 percent of spring wheat growers believe transgenic wheat would provide better weed and insect control; 79 percent believe transgenic wheat would reduce herbicide and insecticide use; and 64 percent believe that transgenic

crops are easier to grow than traditional crops. The respondents indicated they were very interested in accessing traits such as higher yields, control of fusarium, and complete tolerance to Roundup, as well as consumer traits such as extended shelf life. When asked if they would be interested in planting a product that was cost-neutral, had effective volunteer control, and for which markets existed, 7 out of 10 said they would be very interested.

Whether markets for transgenic wheat actually exist prompted significant testimony and discussion. Some argued that wheat is being made a sacrificial crop and that traditional purchasers of North Dakota wheat are already turning to other sources for their supplies because the United States is pursuing research regarding transgenic wheat. It was suggested a state-wide moratorium was the only way to prevent the introduction of a product that carried with it a host of questions regarding not only its marketability, but also regarding its long-term effects on humans, on the environment, and on agricultural production in general. A moratorium was also suggested as a way to give the Legislative Assembly time to address the multitude of concerns.

Committee Considerations and Recommendations

The committee was informed that statements regarding the aversion of export markets to transgenic wheat need to be examined carefully, particularly with respect to the percentage of the product that those countries purchase. The countries that are adverse to transgenic wheat account for only 1 percent of the product purchases. The largest market is the domestic market.

The committee also was informed that statements regarding consumer acceptance of transgenic wheat need to define who the consumer is. Is it the sandwich eater, the bread purchaser, a governmental agency, or some other entity? Household consumers, bakers, and millers have divergent interests. In addition consumer acceptance of transgenic wheat is somewhat of a nebulous concept because the product is not yet available to consumers for their acceptance or rejection.

The committee was informed that confusion also exists with respect to labeling requirements. Approval of a trait is not the same as a labeling requirement. In Japan, labeling is required only if the top three ingredients exceed 5 percent. Approximately one year ago, the European Union proposed 1 percent tolerance levels and recently approved a .5 percent tolerance level. The imposition of tolerances is not a restriction on importation; however, it merely requires that the product be labeled.

The committee was informed that in order for tolerance levels to be in effect, testing mechanisms must also be readily available. The cost of tests has dropped threefold to fourfold over the past two years. There is a correlation between cost-effectiveness and efficiency and precision. Tests that have a 99 percent accuracy in determining a 1 percent tolerance level cost

approximately \$120. More precise tests can cost \$400. A test that references the Japanese tolerance level of 5 percent costs about \$20.

The committee was informed that once tests confirm the content of the product, issues of segregation come into play. Segregation is not new to the wheat industry. Segregations are regularly made based on grades, protein, and dockage. Segregation is a major concern, however, for organic farmers.

The committee considered two bill drafts relating to transgenic wheat. The first bill draft would have provided that the producer of an organic wheat crop could file a claim for damages against the patent holder of a transgenic wheat seed provided the producer intended to plant and did plant and harvest an organic wheat crop, the producer discovered through testing prior to sale that the organic crop had become contaminated with a transgenic wheat, the contamination exceeded a tolerance level of 1 percent, and the producer's crop was in fact worth less than it would have been had the contamination not occurred. The bill draft would have allowed for this same type of claim by the producer of a nontransgenic wheat and by the producer of nontransgenic wheat seed. Damages for all three types of producers would have been limited to the difference in payment between what the producers actually received and what they would have received had the contamination not occurred. If the producer sues and is awarded damages, the producer would be entitled to reimbursement for all costs and attorney's fees associated with bringing the action. If on the other hand the producer sues and is not successful, the producer would have to pay the costs and attorney's fees that the patent holder incurred in defending the case. The bill draft would have provided that it would be a complete defense against any claim for damages arising under the Act if the patent holder could demonstrate that the contamination occurred or could reasonably be believed to have occurred as a result of an act over which the patent holder had no control. Such circumstances would have included the use of a contaminated seed source, and the use of insufficiently cleaned equipment in the harvesting of the crop, in the transportation of the crop, or in the storage of the crop. The patent holder would still have been responsible for damages arising as a result of an Act of God.

While proponents argued that the bill draft is a necessary first step to reimbursing organic farmers who will lose market share because of contamination by transgenic wheat and to recognizing that not all the product's unintended effects are known, opponents argued that the legal concept of strict liability is applied only to situations in which there are defective or inherently dangerous products. Transgenic wheat is not commercialized now. It will be commercialized only after the federal government, through its regulatory mechanisms, determines that the product is appropriate for release. Opponents also suggested that the current system of liability is applicable to corn, soybeans, and all other transgenic crops and that there is no rational reason to create another system of liability for one particular crop.

The committee makes no recommendation regarding the bill draft to authorize the filing of a claim for damages against the patent holder of a transgenic wheat seed.

The other bill draft created a transgenic wheat board. The members of this board would include the Governor or the Governor's designee, three wheat producers, one of whom the Governor would select from a list of three names offered by the North Dakota Farm Bureau and one of whom would be selected from a list of three names offered by the North Dakota Farmers Union, one individual who would represent the grain elevator industry, one individual who would represent the grain transportation industry, three individuals who held doctoral degrees in agricultural research, agricultural economics, law, or a related field, the Agriculture Commissioner, the State Seed Commissioner, and the administrator of the North Dakota Wheat Commission. The board would meet at least quarterly.

The bill draft would give the board a comprehensive set of duties. These duties include soliciting and receiving information on and monitoring scientific, legislative, and regulatory efforts regarding transgenic wheat at state, national, and international levels; soliciting and receiving information on and monitoring national and international wheat markets with respect to the acceptance or rejection of transgenic wheat; and determining whether the production of transgenic wheat in this state will require state or federal legislation addressing a host of issues such as public and private research efforts, grower or planting site registration, inspection, testing and identification, labeling, segregation, identity preservation, tolerances, transportation, liability, assessments, and enforcement.

The transgenic wheat board would have the ability to draft legislation, to recommend any federal legislation it deems necessary to this state's congressional delegation, and to recommend regulatory changes to the Agriculture Commissioner, the State Seed Commissioner, and to any other state agency. The board also would have the duty to serve as a clearinghouse for economic impact data and marketing information pertaining to transgenic wheat.

The bill draft carries an expiration date of June 30, 2005. The board would have the ability to introduce its recommendations for consideration by the 59th Legislative Assembly. The Legislative Assembly could in turn determine whether the board's existence should be extended, whether the board's role and mission needed to be reconfigured, or whether the impetus for the board no longer existed.

While opponents of the bill draft indicated that it does not address, control, or limit the introduction of transgenic wheat, proponents of the bill draft indicated that it does allow for continued dialogue regarding the host of issues associated with transgenic wheat.

The committee recommends House Bill No. 1026 to establish the transgenic wheat board. The committee determined that much work remains to be done to establish a system that allows multiple interests to coexist and prosper. Issues of inspection, testing and identification, labeling, segregation, identity preservation, tolerances,

transportation, and liability, among others, still need to be explored and discussed from a variety of perspectives before state level legislation and regulation should be undertaken.

ETHANOL STUDY

Background

Ethanol is an alcohol made by fermenting and distilling simple sugars. Ethyl alcohol is found in alcoholic beverages. When denatured, it can be used for both fuel and industrial purposes. The most significant use of fuel ethanol in the United States is as an additive in gasoline. In this venue, it serves as an oxygenate to prevent air pollution from carbon monoxide and ozone, as an octane booster to prevent engine knock, and as an extender of gasoline. Ethanol is produced and consumed mainly in the Midwest where corn, the main feed stock used in ethanol production, is grown.

Ethanol gained favor in the early 1970s when the oil embargoes prompted the search for alternative fuels and for renewable sources of energy. Ethanol fell into both categories. First used as a product extender, ethanol production was further enhanced by a partial exemption from the motor fuels excise tax and the desire of corn producers to expand the market for their crop. More recently the production of ethanol has been stimulated by the Clean Air Amendments of 1990, which required oxygenated or reformulated gasoline to reduce emissions of carbon monoxide and volatile organic compounds. Today 99.8 percent of the ethanol used is in a blended form--generally 10 percent ethanol to 90 percent gasoline. It can be used in purer forms as well.

Ethanol and Agriculture

Approximately 90 percent of the feed stock used in ethanol production comes from corn. The remaining 10 percent consists of grain sorghum, barley, wheat, cheese whey, and potatoes. Because one bushel of corn can produce 2.5 gallons of ethanol, it was estimated that during the 2000-01 marketing year, 615 million bushels of corn were used to produce 1.5 billion gallons of ethanol. This amounted to 6.17 percent of corn utilization.

Ethanol Production

Ethanol can be processed by dry milling plants, which use a grinding process, or by wet milling plants, which use a chemical extraction process. In both instances the corn is processed and various enzymes are added to separate fermentable sugars. Yeast is then added to make alcohol. If the alcohol is to be used for fuel and industrial purposes, it is denatured to make it unfit for human consumption.

Ninety percent of all ethanol production occurs in the corn belt states of Illinois, Iowa, Nebraska, Minnesota, and Indiana. The proximity of the ethanol production facilities to the raw material helps to keep shipping costs low. Consequently the major purchasers of ethanol are the metropolitan regions in the Midwest. When ethanol

is shipped to other regions, costs tend to increase because ethanol-blended gasoline cannot be shipped through petroleum pipelines.

Domestic ethanol production capacity is approximately two billion gallons per year. During the year 2000 the largest producer of ethanol was Archer Daniels Midland, at 797 million gallons. Minnesota Corn Processors produced 110 million gallons, while Williams Energy Services and Cargill each produced 100 million gallons. All other production constituted significantly smaller amounts.

Ethanol Usage - Nationwide

During 1999, 1.4 billion gallons of ethanol were consumed in the United States. Most of that consumption was in a blended form consisting of 10 percent ethanol and 90 percent gasoline. During that same year gasoline usage was estimated to be 125 billion gallons. Ethanol's market share in 1999 was therefore 1.2 percent. Even with growth predictions of 2.6 billion gallons by 2005 and 3.3 billion gallons by 2020, ethanol's market share would still be only 1.5 percent.

Ethanol Usage - North Dakota

North Dakotans consume about 373 million gallons of gasoline each year. Approximately 20 percent of that gallonage contains 10 percent ethanol. The size of North Dakota's ethanol market is therefore in the range of eight million gallons per year. This state's existing production capacity is in the range of 30 million gallons annually. The excess ethanol is marketed in other states. Montana has ethanol usage in the range of six million gallons and has no production capacity. Wyoming has ethanol usage of approximately nine million gallons per year but produces five million gallons, and Minnesota has an annual ethanol usage of 240 million gallons and a production capacity of 224 million gallons.

Committee Considerations and Recommendations

A number of years ago the state of Minnesota mandated the blending of gasoline with ethanol. Today ethanol-blended gasoline constitutes 97 to 98 percent of all gasoline sold in the state. Similarly South Dakota instituted a retail incentive that allows ethanol-blended gasoline to be sold for approximately two cents per gallon less than nonblended gasoline. Today ethanol-blended gasoline constitutes approximately 60 percent of all gasoline sold in the state.

In 2001 Iowa enacted a retail incentive bill that provides an income tax credit to retailers whose ethanol-blended gasoline constitutes 60 percent or more of their total retail fuel sales. It is expected this effort will more than double the market share currently enjoyed by ethanol in Iowa.

Against this backdrop the committee considered two bill drafts that would mandate ethanol use and two bill drafts that would provide various incentives designed to increase ethanol production and use in this state. One

bill draft provided that all gasoline having an octane rating of 87 and offered for sale must be blended with ethanol at the rate of 10 percent. The other bill draft would have required that beginning January 1, 2004, ethanol-blended gasoline would have to be sold from at least one pump at each retail location and that beginning January 1, 2005, a retailer would have to offer an ethanol blend from at least one pump dispensing the lowest octane rating of gasoline at each place of business.

Opponents of the bill drafts pointed out that these were mandates and that traditionally mandates have not been looked upon favorably by the electors of this state. They indicated it would be very much preferred if the Legislative Assembly would focus its efforts on production incentives. Unlike a mandate a production incentive would encourage the erection of a new ethanol plant in part by assuring lenders that money was available to assist the owners during the initial years of plant operation. Proponents argued that the state's budget might not be able to accommodate a sizable production incentive for ethanol. A mandate, on the other hand, required no expenditure of funds on the part of the state.

The committee makes no recommendation regarding the bill draft requiring pumps at retail locations.

The committee considered a bill draft that would have provided an income tax credit as an incentive to retailers if 60 percent or more of the total gallons of gasoline sold by that retailer were blended with ethanol. Proponents suggested that any investment in the future of the state's ethanol industry would have a monetary return to the state in terms of additional income taxes being paid, and it would support the agricultural sector by creating a market for corn and increasing the price per bushel anywhere from 5 to 20 cents.

Opponents, however, pointed out that the dollars necessary to fund such a concept would result in a significant reduction in general fund revenues or, if the concept were to be revenue-neutral, there would have to be an increase in motor vehicle fuel taxes. Opponents also pointed out that if ethanol were to be made a more marketable product by means of imposing a lower tax rate than that placed on other motor vehicle fuels, the impact to the state treasury would continue to escalate as more and more ethanol would be purchased at the lower tax rate rather than nonblended gasoline which would be taxed at a higher level.

The committee makes no recommendation regarding the bill draft to provide an income tax credit to ethanol retailers.

The committee considered a bill draft that would have provided an incentive payment to an ethanol plant if it locates in this state, files a request for an incentive payment with the Agricultural Products Utilization Commission, demonstrates that the ethanol to be manufactured would be sold at retail, and if it submits a statement regarding profitability to the Agricultural Products Utilization Commission. If a plant is determined to have made a profit, it would not receive the incentive payment. If a plant is determined not to have made a profit, the payment would be forthcoming. The appropriation,

which was at an unspecified level, would have come from the highway tax distribution fund.

Opponents of the bill draft were particularly concerned about the impact the appropriation would have on the highway tax distribution fund and particularly on the ability of the Department of Transportation to provide matching funds for federal grants. Others indicated that legislators were working with the Governor to craft a producer-incentive bill that would be based on countercyclical payments. Because agreements regarding the nature and the scope of the concept were not reached in time to allow for their consideration by the interim committee, the concept is to be offered by individual legislators to the 58th Legislative Assembly.

The committee makes no recommendation regarding the bill draft to provide incentive payments to ethanol plants.

The committee recommends Senate Bill No. 2027 to require that all gasoline having an octane rating of 87 and offered for sale be blended with ethanol at the rate of 10 percent. This mandate would serve to promote ethanol and increase its use in a fashion that could not be equaled through any other means, including the erection of a new plant.

BIODIESEL STUDY

Biodiesel - Description

Biodiesel is a diesel fuel substitute that is produced from renewable sources such as vegetable oils, animal fats, and recycled cooking oils. Chemically, biodiesel is defined as the mono-alkyl esters of long chain fatty acids derived from renewable lipid sources. Biodiesel is typically produced through the reaction of a vegetable oil or animal fat with methanol or ethanol in the presence of a catalyst to yield glycerin and biodiesel. Biodiesel can be used in neat form or blended with petroleum diesel for use in diesel engines. The physical and chemical properties of biodiesel, as they relate to the operation of diesel engines, are similar to petroleum-based diesel fuel. Biodiesel is simple to use, biodegradable, nontoxic, and essentially free of sulfur and aromatic compounds.

The concept of using a vegetable oil-based fuel dates back to 1895 when Dr. Rudolf Diesel developed the first compression-ignition engine specifically to run on vegetable oil. Because biodiesel has properties that are very similar to petroleum diesel, it can be blended with petroleum diesel in any ratio and can therefore be used in diesel engines with no major modifications beyond those involving certain hose and fuel line substitutions.

Attributes of Biodiesel

Degradation

The current key biodiesel markets are mass transit, the marine industry, and other environmentally sensitive areas such as mining. In the marine industry biodiesel is gaining favor because it has high degradation attributes. Recent studies comparing the biodegradation of biodiesel and diesel fuel in aqueous solutions found that the biodiesel samples were 95 percent degraded after 28 days. At the end of the same period diesel fuel was

only 40 percent degraded. The study concluded that blended biodiesel would therefore degrade faster than regular diesel fuel.

Flashpoint

For the mining industry, biodiesel is attractive from a safety perspective. Biodiesel has a much higher flashpoint than other fuels, and consequently it needs to reach a much higher temperature before it will ignite when exposed to a spark or flame. Studies have found that if diesel fuel is blended with biodiesel, even in fairly small ratios, the resultant fuel becomes much safer to handle, store, and use than conventional diesel fuel.

Toxicity

Another important aspect of biodiesel is its toxicity level. Health effects can be measured in terms of a fuel's toxicity to the human body or in terms of health impacts tied to exhaust emissions. Recent studies have investigated the acute oral toxicity of pure biodiesel as well as that of a 20 percent biodiesel blend on rats and rabbits. At established median lethal dose levels, there were no observable effects for system toxicity. There were no deaths, significant weight changes, or gross necropsy findings. Aquatic toxicity tests have also demonstrated that biodiesel is less toxic than both diesel fuel and table salt.

Emissions

With respect to emissions reductions, biodiesel in a conventional diesel engine results in a substantial reduction of unburned hydrocarbons, carbon monoxide, and particulate matter. The emission levels of nitrous oxides are less clear. Some are slightly reduced and others are slightly increased. The results were thought to depend upon the duty cycle of the engine and the testing methods employed. Particulate emissions from conventional diesel engines are generally divided into three components. The first is carbaceous material-carbon particles most often associated with the visible smoke of diesel exhaust. The second is hydrocarbon material, which is absorbed on the carbon particles, and the third is engine lubrication oil that passes by the piston oil rings. This final component consists of sulfates and bound water. The use of biodiesel serves to decrease the solid carbon fraction of the particulate matter and eliminates the sulfate fraction, while the soluble or hydrocarbon fraction stays the same or is increased.

In addition to reducing the overall levels of pollution and carbon, the compounds that are prevalent in biodiesel and diesel fuel exhaust are different. The total speciated hydrocarbon mass of biodiesel is nearly 50 percent less than that measured for conventional diesel fuel and the associated ozone potential is reduced by the same amount.

Lubricity

Of greater significance to many fleet operators is biodiesel's lubricity levels. In an attempt to decrease particulate matter emitted from diesel-powered engines,

the Environmental Protection Agency, in the early 1990s, lowered the permissible level of sulfur in diesel fuel to 0.05 percent by weight. Fleet operators soon realized that the use of low sulfur diesel fuel caused injection pumps to wear prematurely. The pump manufacturers determined that this problem could be countered by using fuel with lubricity additives. Research has shown that biodiesel provides significant lubricity over that of traditional diesel fuel. This lubricity has been noted even in blends as low as 1 percent.

Resource and Market Issues

The development and commercialization of not only biodiesel, but biofuels technology in general, depend on and, conversely, influence several issues of national importance. At the root of these issues is the finite nature of petroleum. The benefits of biofuels and the influences on the development of biofuels technology are inextricably linked to three vital factors in the continuing stability of this country--the economy, the environment, and energy.

Economy

The United States economy is closely tied to crude oil. A \$1 change in the price of a barrel of crude oil can lead to a \$1 billion impact in the level of oil imports. Oil imports account for almost half of the United States trade deficit. As a result, any variation in the price has a significant impact on the economy.

United States Military and Oil

In order to maintain the uninterrupted flow of oil from the Persian Gulf region, the United States expends approximately \$57 billion per year. During the 1980s this expenditure was \$36.5 billion per year. These figures include both military and foreign aid expenditures in the region. When military and energy security factors are taken into account, the true cost for oil reaches \$100 a barrel or approximately \$5 per gallon. These figures are for peacetime expenditures. Any military engagement in the area would significantly increase the cost of oil. The Persian Gulf War, for example, carried a price tag in excess of \$61 billion.

United States Agricultural Economy and Biofuels

The use of biofuels, whether biodiesel or other alternative fuels, can impact many sectors of the United States economy, not the least of which is agriculture. If the biofuels industry could grow to the point where increased feed stock supplies are needed, the agricultural sector could be expanded to meet those needs. Opportunities would exist for farmers to grow new crops and to increase production of traditional crops for new uses. Much of the revenue for manufacturing, installing, fueling, and operating biofuels plants could be maintained in the region that actually provided the feed stock. This would result in jobs in the agricultural sector and in the surrounding communities.

Committee Considerations and Conclusions

The committee was informed that if a 10 million gallon biodiesel plant would be built, that facility could utilize 10 percent of the North Dakota soybean crop. It was suggested that the resultant biodiesel could be used not only in tractors and combines but in governmentally sponsored forms of transportation such as schoolbuses, garbage trucks, and state vehicles. While the committee members recognized the meritorious nature of requiring the use of biodiesel fuel, they determined that it would be premature to mandate the use of biodiesel fuel before there existed the ability to produce it in sufficient quantities and the ability to market it in locations that are proximate to the users. It was indicated that the Energy and Environmental Research Center at the University of North Dakota would be undertaking a biodiesel impact study in the near future. The committee determined that the results of this study might alleviate some of the existing concerns regarding the cost of biodiesel production, its use in frigid temperatures, its short-term and long-term effects on diesel engines, and the sufficiency of the biodiesel supply infrastructure.

The committee makes no recommendation regarding the biodiesel study.

GRAIN SHIPPING RATES STUDY

The Burlington Northern Santa Fe (BNSF) is one of two principal railroads operating in North Dakota. During the early 1980s BNSF conducted a study regarding the manner in which it was running its grain transportation business. As a result BNSF opted to make some fundamental changes in that aspect of its operations. Burlington Northern Santa Fe stopped using a mileage-based-cost-plus approach to transportation rates and implemented a market-based approach. As a result a farmer's cooperative that ships a single car or a shuttle train from point A to point B pays the same transportation rate as a large shipper such as Cargill. The large shippers are not given favorable positions. However, BNSF does give rate differentials as a function of product efficiency. A single-car shipment is more expensive than a 26-car shipment, which in turn is more expensive than a 52-car shipment. A 52-car shipment is likewise more expensive than a shuttle train consisting of 110 cars.

In the 1990s BNSF started to standardize unit train sizes and began investing in high-capacity cars that carry 10 percent more product than their predecessors. Even though BNSF downsized its grain fleet from 35,000 to 29,000 cars, it increased its carrying capacity and broadened its product offerings.

By 2001, 5,500 of BNSF's 29,000 cars were in shuttle service. Those 5,500 cars were generating nearly 40 percent of BNSF's carrying capacity. The cars are high-capacity hoppers, and they turn an average of three times a month, as opposed to 1.4 times a month for a traditional grain fleet. The difference is found not in the transit time but in the end points—the time it takes for

customers to load and unload and the amount of time it takes to put trains together.

While BNSF has found that these changes dramatically improved overall system performance, grain elevators have found that they are constantly having to make capital investments to accommodate the larger trains. Elevators that spent hundreds of thousands and even millions of dollars to upgrade their facilities to 52-car loading facilities are now not able to obtain the preferred rate given to those that can accommodate the 110-car shuttle trains. In fact, of the 190 elevators on the BNSF line in North Dakota, only nine can accommodate the shuttle trains; approximately 50 can load 52-car shipments; 40 can load 26-car shipments; and the remaining elevators can load only quantities smaller than 26 cars.

Compounding this concern was the fact that in 2001 BNSF was offering inverse pricing rates for grain shipped to the Pacific Northwest. The rates were \$1.09 per bushel for grain shipped to the Pacific Northwest from Gladstone, 99 cents per bushel for grain shipped from Sterling, 93.5 cents per bushel for grain shipped from Jamestown, and 80 cents per bushel for grain shipped from Breckenridge, Minnesota. It was suggested by grain elevator operators that these rates were instituted at a time when the western part of the state could provide the grain needed for shipment to the Pacific Northwest.

Representatives of BNSF indicated that Montana's wheat production had seriously declined in 2000, and that by early 2001 Pacific Northwest export customers were signaling a concern that not enough wheat would be available to fill their export orders. There was also concern that if wheat availability proved to be insufficient, contracts would be lost to Canadian suppliers. Consequently in March 2001 BNSF put in place rates that allowed the Pacific Northwest exporters to reach farther east than they normally would to obtain the necessary product.

Recognizing the impact the inverse rates were having on the state's smaller elevators, the Governor asked the governors of neighboring states to join him in working toward a solution that would eliminate the unfair grain prices. The Governor specifically asked BNSF to evaluate its rates and to commit to making those rates equitable.

In July 2002 BNSF announced it would end its practice of inverse pricing by increasing rail rates in eastern North Dakota rather than lowering the rates charged in western North Dakota.

The committee makes no recommendation regarding the study of grain shipping rates.

MISCELLANEOUS REPORTS State Board of Agricultural Research - Annual Evaluation of Research Activities and Expenditures

The State Board of Agricultural Research and Education is at a challenging point in its growth and development. As individual terms of office are concluding, the board is trying to ensure that new members quickly

acquire an understanding of the board's role and mission.

In order to best serve its constituency the committee was informed the board is putting forth a concerted effort to determine how it can best serve agricultural producers in this state and, most importantly, how it can best utilize its limited resources. It is anticipated certain programs will have to be terminated or otherwise curtailed in order to avoid a dilution of all the board's efforts. The board indicated such decisions will be difficult, but they will be made with the goal of ensuring excellence in whatever efforts are undertaken and with the hope that the Legislative Assembly will be supportive of the decisions.

State Seed Commissioner - Transgenic Seeds and Crops

Transgenic potatoes and sugar beets have received federal regulatory approval for commercial production, but growers in the state have elected not to adopt the technology. The reason appears to center around market demands. On the other hand more than half of all soybeans and canola now grown in this state contain transgenic traits. North Dakota is capable of producing, handling, testing, and segregating food grade commodities to a fairly low tolerance level, i.e., less than 5 percent

transgenic content. It is not, however, capable of meeting either a zero tolerance requirement or providing a 100 percent assurance regarding the presence or absence of genetic modification in any seed or crop.

Transgenic wheat is regulated under United States Department of Agriculture - Animal and Plant Health Inspection Service research restrictions. Transgenic wheat is not bound by or subject to export tolerances and no commercially available testing methods are available. Therefore all discussions surrounding transgenic wheat tend to be purely speculative.

Transgenic wheat will not be released for commercial production during the coming two to three years. Its patent holder, Monsanto, has publicly committed to withhold release of the product until certain milestones are met, including regulatory approval and market acceptance. In addition to Monsanto's commitment, there are other factors that will ensure the delay in release. Those factors include federal agency response to the heavy and often controversial scrutiny that has been given to the product, the need to establish national and international tolerance levels, and the need to standardize handling, sampling, and testing protocols and procedures.

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 Ken Svedjan (Chairman), Ole Aarsvold, Wesley R. Belter, LeRoy G. Bernstein, James Boehm, Merle Boucher, Rex R. Byerly, Ron Carlisle, Jeff Delzer, Eliot Glassheim, Pam Gulleston, Robert Huether, Keith Kempenich, James Kerzman, Kim Koppelman, Bob Martinson, David Monson, Bob Skarphol, Blair Thoreson, Mike Timm, Francis J. Wald, John M. Warner, Amy Warnke, and Janet Wentz and Senators John M. Andrist, Bill Bowman, Randel Christmann, Tony Grindberg, Joel C. Heitkamp, Ray Holmberg, Aaron Krauter, Ed Kringstad, Elroy N. Lindaas, Dave Nething, Larry J. Robinson, Randy A. Schobinger, Ken Solberg, Bob Stenehjelm, Harvey Tallackson, Russell T. Thane, and Steven W. Tomac.

The Budget Section submitted this report to the Legislative Council at the biennial meeting of the Council in November 2002. The Council accepted the report for submission to the 58th Legislative Assembly.

The following duties, assigned to the Budget Section by statute, were acted on during the 2001-03 biennium:

- 1. Higher education campus improvements and building construction (NDCC Section 15-10-12.1 and 2001 Senate Bill No. 2039, Section 1)** - This section requires the approval of the Budget Section or the Legislative Assembly for the construction of any building financed by donations, gifts, grants, and bequests on land under the control of the State Board of Higher Education. Campus improvements and building maintenance of more than \$385,000 also require the approval of the Budget Section or the Legislative Assembly. Budget Section approval can only be provided when the Legislative Assembly is not in session, except during the six months prior to a regular legislative session. Budget Section approval regarding the construction of buildings and campus improvements must include a specific dollar limit for each building, campus improvement, or maintenance project. If a request is to be considered by the Budget Section, the Legislative Council must notify each member of the Legislative Assembly and allow any member to present testimony to the Budget Section regarding the request. Campus improvements and building maintenance of \$385,000 or less

and the sale of real property received by gift or bequest may be authorized by the State Board of Higher Education.

- 2. Irregularities in the fiscal practices of the state (NDCC Section 54-14-03.1)** - 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, cash incentive awards, or temporary salary adjustments for state employees.
- 3. Transfers exceeding \$50,000 (NDCC Section 54-16-04(2))** - This section provides that, subject to Budget Section approval, the Emergency Commission may authorize a transfer of more than \$50,000 from one fund or line item to another. Budget Section approval is not required if the transfer is necessary to comply with a court order, to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis, or to avoid an imminent financial loss to the state.
- 4. Federal funds not appropriated (NDCC Section 54-16-04.1)** - This section provides that Budget Section approval is required for any Emergency Commission action authorizing a state officer to spend more than \$50,000 of federal funds that were not appropriated and that the Legislative Assembly has not indicated an intent to reject.
- 5. Other funds not appropriated (NDCC Section 54-16-04.2)** - This section provides that Budget Section approval is required for any Emergency Commission action authorizing a state officer to spend more than \$50,000 from gifts, grants, donations, or other sources, which were not appropriated and which the Legislative Assembly has not indicated an intent to reject the moneys or programs.
- 6. Report from ethanol plants receiving production incentives (2001 Senate Bill No. 2019)** - Section 4 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.
- 7. 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 request.

8. **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 has assigned this responsibility to the Budget Section.
9. **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.
10. **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.
11. **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, and expenditure, or the failure to make an allotment or expenditure if such action is contrary to legislative intent.
12. **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.
13. **Reports on medical assistance expenditures and approval to spend funds resulting in a request for deficiency appropriations (2001 House Bill No. 1012, Section 20)** - This section requires the Department of Human Services to report to each meeting of the Budget Section during the 2001-02 interim on the status of actual medical assistance expenditures to projections based on legislative appropriations for the 2001-03 biennium and provides for the Budget Section to approve any request to expend funds at a level that will require a request for a general fund deficiency appropriation.
14. **Transfers from the Bank of North Dakota to offset declines in general fund revenues (2001 House Bill No. 1015, Section 12)** - This section provides that the Budget Section may approve the transfer of up to \$25 million from the Bank of North Dakota to the state general fund if, during the 2001-03 biennium, the director of the Office of Management and Budget determines that general fund revenues will not meet the legislative forecast.
15. **Debt forgiveness plan at the Fargo Family Healthcare Center (2001 House Bill No. 1015, Section 21)** - This section requires the University of North Dakota School of Medicine and Health Sciences to forgive the amount of debt owed by the Fargo Family Healthcare Center upon the center's adoption of a plan to address sustainability of programs at the center, approval of the plan by the Budget Section, adoption by the city of Fargo of a plan to provide support to the center, forgiveness by the city of Fargo of center debt relating to rental expenses, and final approval by the Budget Section.
16. **Status of the risk management workers' compensation program (NDCC Section 65-04-03.1 and 2001 House Bill No. 1015, Section 29)** - This section requires the Workers Compensation Bureau and the Risk Management Division of the Office of Management and Budget to periodically report to the Budget Section on the success of the risk management workers' compensation program.
17. **Additional full-time equivalent (FTE) positions at the Workers Compensation Bureau (2001 House Bill No. 1024, Section 2)** - This section authorizes the Workers Compensation Board of Directors to hire up to 10 FTE positions in addition to the FTE positions authorized in Section 1 of House Bill No. 1024 for the 2001-03 biennium and requires the board to report to the Budget Section on any additional FTE positions and related funding authorized.
18. **Rental space in proposed Workers Compensation Bureau building (2001 House Bill No. 1024, Section 5)** - This section requires that if a new Workers Compensation Bureau facility is built, the bureau is to report to the Budget Section on plans for leasing space in the building to other state agencies.
19. **Transfers to the state tuition fund (NDCC Section 15.1-02-14 and 2001 House Bill No. 1058, Section 1)** - This section requires the Superintendent of Public Instruction to report annually to the Budget Section regarding any transfer to the state tuition fund of federal or other moneys received by the Superintendent to pay programmatic administrative expenses for which the Superintendent received a state general fund appropriation.
20. **Job insurance trust fund (NDCC Section 52-02-17 and 2001 House Bill No. 1084, Section 1)** - This section requires that Job Service North Dakota report before March 1 of each year the actual job insurance trust fund balance and the targeted modified average high-cost multiplier, as of December 31 of the previous year, and a projected trust fund balance for the next three years.

21. **Survey of all political subdivision-owned armories (2001 House Bill No. 1215, Section 1)** - This section appropriates funds to the Adjutant General for the purpose of distributing grants on an equal matching fund basis to political subdivisions for the maintenance and repair of political subdivision-owned armories. Before approval of any project under the program, the Adjutant General is to conduct a major repair and maintenance needs survey of all political subdivision-owned armories and provide a report of the results of the survey and recommendations to the Budget Section.
 22. **Additional .5 FTE position in the Department of Financial Institutions (2001 Senate Bill No. 2008, Section 2)** This section authorizes the Department of Financial Institutions, upon approval of the Emergency Commission and the Budget Section, an additional .5 FTE position for the licensing and regulation of deferred presentment service providers.
 23. **Status of the Department of Commerce (2001 Senate Bill No. 2019, Section 7)** - This section requires the commissioner of the Department of Commerce to report periodically to the Budget Section during the 2001-02 interim on the status of the establishment of the Department of Commerce.
 24. **Performance measures for the Department of Commerce (2001 Senate Bill No. 2019, Section 7)** - This section requires the commissioner of the Department of Commerce to establish performance measures and report to the Budget Section on the department's progress in achieving its performance measures for the 2001-03 biennium.
 25. **Workforce training funds raised by the University System (2001 Senate Bill No. 2020, Section 5)** - This section requires the North Dakota University System to report during the 2001-02 interim to the Budget Section regarding the amount of workforce training funds raised in each region of the state during the first fiscal year of the biennium and the amount anticipated to be raised before June 30, 2003.
 26. **Status of the State Board of Agricultural Research and Education (NDCC Section 4-05.1-19 and 2001 Senate Bill No. 2021, Section 10)** - This section requires the State Board of Agricultural Research and Education to present a status report to the Budget Section during the 2001-03 biennium concerning employees, expenditures, research and cooperative projects, and source of income for the extension centers and main station.
 27. **Requests by the Information Technology Department to finance the purchase of software, equipment, or implementation of services (NDCC 54-59-05(4) and 2001 Senate Bill No. 2043, Section 2)** - This section requires the Information Technology Department to receive Budget Section approval before executing any proposed agreement to finance the purchase of software, equipment, or implementation of services in excess of \$1 million.
 28. **Report from the Information Technology Department (NDCC Section 54-59-19 and 2001 Senate Bill No. 2043, Section 8)** - This section requires the Information Technology Department to prepare and present an annual report to the Information Technology Committee and to present a summary of the report to the Budget Section.
 29. **Performance measures developed in the Information Technology Department (2001 Senate Bill No. 2043, Section 9)** - This section requires the Information Technology Department to develop performance measures to assist the Legislative Assembly in determining the effectiveness and efficiency of the department's operations during the 2001-03 biennium and to report the results to the Budget Section.
- The following duty, assigned to the Budget Section by Legislative Council directive, is scheduled to be addressed by the Budget Section at its December 2002 meeting:
- Review and report on budget data (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.
- The following duties, assigned to the Budget Section by statute or Legislative Council directive, did not require action by the Budget Section during the 2001-02 interim:
1. **Children's Services Coordinating Committee grants (NDCC Section 54-56-03 and 2001 Senate Bill No. 2014, Section 2)** - These sections provide that Budget Section approval is required prior to the distribution by the Children's Services Coordinating Committee of any grants not specifically authorized by the Legislative Assembly.
 2. **State Forester reserve account (NDCC Section 4-19-01.2)** - This section provides that Budget Section approval is required prior to the State Forester spending moneys in the State Forester reserve account.
 3. **Investment in real property by the Board of University and School Lands (NDCC Section 15-03-04)** - This section provides that Budget Section approval is required prior to the Board of University and School Lands purchasing, as sole owner, commercial or residential real property in North Dakota.
 4. **Game and Fish Department land acquisitions (NDCC Section 20.1-02-05.1)** - This

section provides that Budget Section approval is required for Game and Fish Department land acquisitions of more than 10 acres or costing more than \$10,000.

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 at Westwood Park, Grafton, 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. **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.
9. **Cashflow financing (NDCC Section 54-27-23)** - This section provides that in order to meet the cashflow 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 cashflow financing, subject to certain limitations, must be approved by the Budget Section.
10. **Budget stabilization fund (NDCC Section 54-27.2-03)** - This section provides that any transfers from the budget stabilization fund must be reported to the Budget Section.
11. **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 reductions caused by initiative or referendum action.
12. **Program terminations or reductions due to reduced federal funding (2001 House Bill No. 1015)** - Section 14 of this bill requires state agencies, departments, and institutions to receive Budget Section approval for the following:
 - a. Termination of a program for which federal funding is terminated.
 - b. Prioritization of 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.
13. **Federal block grant hearings (2001 Senate Concurrent Resolution No. 4002)** - This resolution authorizes the Budget Section, through September 30, 2003, to hold any required legislative hearings for federal block grants.
14. **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.
15. **Closing of the State Hospital landfill (2001 House Bill No. 1012, Section 23)** - This section authorizes the State Hospital, during the second year of the 2001-03 biennium, to use projected savings from other areas of the budget and transfer appropriation authority between line items to provide funding for the costs of closing the State Hospital landfill, subject to Emergency Commission and Budget Section approval.
16. **Waiver of exemption of special assessments levied for flood control purposes on state property (NDCC Section 40-23-22.1 and 2001 House Bill No. 1015, Section 17)** - This section provides that state property in a city is exempt from special assessments levied for flood control purposes unless the governing body of the city requests waiver of the exemption and the exemption is completely or partially waived by the Budget Section.
17. **Sources of funds received for construction projects of entities under the State Board of Higher Education (NDCC Section 15-10-12.3 and 2001 House Bill No. 1015, Section 24)** - This section requires each institution under the State Board of Higher Education undertaking a capital construction project, that was approved by the Legislative Assembly and for which local funds are to be used, to present a biennial report to the Budget Section detailing the source of all funds used in the project. This

section applies to projects approved after July 1, 2001.

18. **Workers Compensation Bureau building maintenance account (2001 House Bill No. 1024, Section 6)** - This section requires that if a new Workers Compensation Bureau facility is built and rental space is included in the facility, the Workers Compensation Bureau is to deposit the building rental proceeds in a building maintenance account and report to the Budget Section on a biennial basis on the revenues deposited and expenditures from the account.
19. **Annual audits of renaissance fund organizations (NDCC Section 40-63-07 and 2001 House Bill No. 1460, Section 1)** - This section requires the Division of Community Services to provide annual reports to the Budget Section on the results of audits of renaissance fund organizations.
20. **Construction of the Towner nursery tree storage building (2001 Senate Bill No. 2003, Section 14)** - This section authorizes the Forest Service, after receiving approval from the Budget Section, to obtain and use funds received from any source for construction of the Towner nursery tree storage building.
21. **Addition to the Blikre activities center (2001 Senate Bill No. 2003, Section 20)** - This section authorizes the State College of Science, after receiving approval from the Budget Section, to obtain and use funds received from any source to assist in the Blikre activities center addition.
22. **Replacement of federal funding with general or special fund moneys in the Department of Corrections and Rehabilitation (2001 Senate Bill No. 2016, Section 7)** - This section provides that if during the 2001-03 biennium the federal government reduces funding below the level anticipated by the 57th Legislative Assembly for any programs administered by the Department of Corrections and Rehabilitation, the department may not supplant the federal funds with general or special funds without first obtaining approval from the Budget Section.
23. **New correctional programs which exceed \$100,000 of cost during a biennium (NDCC Section 54-23.3-09 and 2001 Senate Bill No. 2016, Section 12)** - This section requires the director of the Department of Corrections and Rehabilitation to report to the Legislative Assembly or, if the Legislative Assembly is not in session, to the Budget Section prior to the implementation of any new program that serves adult or juvenile offenders, including alternatives to conventional incarceration and programs operated on a contract basis if the program is anticipated to cost in excess of \$100,000 during the biennium.

24. **Transfers of funds between line items for the Information Technology Department (2001 Senate Bill No. 2022, Section 2)** - This section authorizes the director of the Office of Management and Budget and the State Treasurer to make transfers of funds between line items of appropriations for the Information Technology Department as requested by the Chief Information Officer. Transfers that increase line items in excess of the January 7, 2001, executive budget recommendation require Emergency Commission and Budget Section approval. The Chief Information Officer is to inform the Budget Section of the transfers.

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 the month of September 2002, and the July 2002 revised revenue forecast for the remainder of the 2001-03 biennium:

Unobligated general fund balance - July 1, 2001	\$62,240,652
Add	
General fund collections through September 30, 2002	990,921,011
Forecasted general fund revenue for the remainder of the 2001-03 biennium (based on the July 2002 revised revenue forecast)	664,245,418
Total estimated general fund revenue for the 2001-03 biennium	\$1,717,407,081
Less	
2001-03 biennium general fund appropriations	1,746,983,713
1.05% allotment - July 2002	(18,343,329)
Department of Human Services - Intergovernmental transfer payment	3,478,509
2001-03 biennium adjusted general fund appropriations	\$1,732,118,893
Add	
Potential transfer from Bank of North Dakota estimated as of September 30, 2002	14,711,812
Estimated general fund balance - June 30, 2003 (\$11,994,694 was the 2001 legislative estimate)	\$0

The July 2002 revenue forecast estimated total revenue to be approximately \$1.641 billion, which was approximately \$64.9 million less than the 2001 legislative forecast. The decrease in revenue was due mainly to decreases in individual income tax and corporate income tax collections. As noted later in this report, in July 2002 the Governor ordered a 1.05 percent allotment under NDCC Section 54-44.1-12 to help offset the budget shortfall and requested Budget Section approval under Section 12 of 2001 House Bill No. 1015 to transfer an additional \$25 million from the Bank of North Dakota to the general fund, which was approved.

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 Parks and Recreation Department granted five employees bonuses, ranging from \$750 to \$1,800, for the work involved with the flooding at Turtle River State Park. The bonuses were provided from Federal Emergency Management Agency funding. The Department of Economic Development and Finance provided a pay incentive in the amount of \$2,850 to an individual involved with the manufacturers' partnership program. The report said the employee was a salaried employee whose salary was reduced, and the maximum amount the employee could receive in incentives could not exceed the original salary. The Department of Public Instruction provided bonuses to 20 employees for temporary workload increases during the 2001 legislative session ranging from \$1,200 to \$3,000.

The Budget Section asked the Legislative Council staff to survey state agencies to determine which agencies were providing employee bonuses. The Legislative Council staff presented the Budget Section with a memorandum entitled *State Agency "Irregular" Salary Payments Survey*. The state agencies were surveyed and provided details on the types and amounts of irregular salary payments provided to employees for fiscal years ended 1999, 2000, and 2001. The state agency survey responses include a description of agencies' nonmonetary compensation policies.

The Legislative Council staff reported to the Budget Section that unless specifically exempted, employees covered by the Fair Labor Standards Act must receive overtime pay for hours worked in excess of 40 hours in a workweek at a rate not less than one and one-half times the regular rate of pay. Employees of a public agency, which is a state, political subdivision of a state, or an interstate government agency, may receive, in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required.

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 money in the preliminary planning revolving fund. The January 2002 balance in the preliminary planning revolving fund was \$148,000. The report listed the following criteria that are used to evaluate agency requests for money from the preliminary planning revolving fund:

- External mandates, such as court order, 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 non-general fund sources.
- Scope of the project, including the estimated costs and the need to complete the project in multiple phases.

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

Project Description	Agency	Recommended Funding From the Preliminary Planning Revolving Fund
Science building and associated spaces renovation	Lake Region State College	\$22,000
O'Kelly Hall renovation (first phase)	University of North Dakota	35,000
Horton Hall renovation	North Dakota State College of Science	59,000
Graichen gymnasium egress and health/safety project	Valley City State University	14,000
Medora Visitor Center addition	State Historical Society of North Dakota	12,000
Total		\$142,000

Pursuant to NDCC Section 54-27-22, the Budget Section approved the distribution of \$142,000 from the preliminary planning revolving fund, as recommended by the Office of Management and Budget. The balance in the preliminary planning revolving fund as of the end of October 2002 was \$137,294.

Tobacco Settlement Proceeds

Pursuant to NDCC Section 54-44-04, the Budget Section received reports on tobacco settlement proceeds received by the state. The Office of Management and Budget reported that as of October 2002 approximately \$79.7 million had been received to date 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 NDCC Section 54-27-25:

Tobacco settlement trust fund	
Community health trust fund (10%)	\$7,968,150
Common schools trust fund (45%)	35,856,673
Water development trust fund (45%)	35,856,673
Total transfers from the tobacco settlement trust fund	\$79,681,496

The Office of Management and Budget reported the balances in the trust funds were:

Community health trust fund	
Deposits	\$7,968,150
Expenditures	2,505,165
September 30, 2002, balance	\$5,462,985
Water development trust fund	
Deposits	\$35,856,673
Expenditures	11,203,215
September 30, 2002, balance	\$24,653,458

2003-05 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 2003 Legislative Assembly and the feasibility and desirability of locating new positions, new programs, or new construction away from a central office setting.

The Office of Management and Budget reported that the Legislative Assembly passed 2001 House Bill No. 1035 providing for a state employee telecommuting incentive program. The telecommuting incentive program provides bonuses to agencies and employees based on savings realized by locating full-time equivalent (FTE) positions away from a central office setting.

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

The Governmental Accounting Standards Board issued new guidelines on governmental financial reporting. The Office of Management and Budget reported that the 2001 Legislative Assembly passed legislation to help North Dakota's transition to the new reporting model. To coincide with the reporting model, the Office of Management and Budget proposed that equipment costs under \$5,000 be moved from an equipment line item to the operating line item. In addition, a new capital assets line item will be used to replace the capital improvements and equipment line items and include all equipment over \$5,000, land and buildings, and other capital payments. Pursuant to NDCC Section 54-44.1-07, the Budget Section approved this request.

Homeland Security Costs

The Budget Section received periodic reports from the Office of Management and Budget on homeland security costs. The Office of Management and Budget reported that through October 3, 2002, state agencies and institutions have incurred or are anticipated to incur a total of \$514,749 of state-funded costs for homeland security measures. The Office of Management and Budget reported the industries most affected by the September 11, 2001, terrorist attacks, including travel-related industries, are not a significant part of North Dakota's economy.

BANK OF NORTH DAKOTA

Transfer

Pursuant to Section 12 of 2001 House Bill No. 1015, the Budget Section received a request for approval to transfer up to \$25 million from the Bank of North Dakota to the state general fund to help offset the revenue shortfall. The Office of Management and Budget, pursuant to NDCC Section 54-44.1-12, implemented a 1.05 percent general fund allotment, saving \$18 million. General fund revenues, including the beginning balance, are expected

to be \$43 million less than the original forecast. The balance, or \$25 million, was proposed to be transferred to the general fund.

Pursuant to the provisions of 2001 House Bill No. 1015, the Budget Section approved the request to transfer up to \$25 million from the Bank of North Dakota to the state general fund to the extent necessary to meet the revenue shortfall, provided any transfers necessary be made as late as possible in the 2001-03 biennium, and the Budget Section encourages the 2003 Legislative Assembly to provide for a transfer of any general fund balance on June 30, 2003, to the Bank of North Dakota, up to the amount of the \$25 million transferred.

FARGO FAMILY HEALTHCARE CENTER

Pursuant to Section 21 of House Bill No. 1015, the Fargo Family HealthCare Center presented a plan addressing the sustainability of programs and services at the center to the Budget Section for approval. Section 21 of House Bill No. 1015 also provides that, upon approval of the plan by the Budget Section, adoption by the City of Fargo of a plan to provide support to the center, and forgiveness by the City of Fargo of at least \$100,000 in center debt relating to rental expenses, the Budget Section may approve the debt forgiveness. The Fargo Family HealthCare Center requested the Budget Section for debt forgiveness of \$395,000 from the University of North Dakota (UND) School of Medicine and Health Sciences. The debt owed to the UND School of Medicine and Health Sciences accumulated in the period from March 14, 1994, through June 30, 1996.

The Fargo Family HealthCare Center was organized in 1994 as a federally funded community health center serving primarily the low income, uninsured, and minorities in the Fargo-Moorhead area. Since the center's opening, there has been a relationship with the UND School of Medicine and Health Sciences to provide resident physicians to serve the center's patients. During the first two years of operation, the center had significant cashflow problems which led to the debt. The center attributed the cashflow problem to the original contract with the UND School of Medicine and Health Sciences and computer conversion problems, which resulted in an inability to bill Medicaid for client services. Corrective action was taken in 1996 and the center has been paying \$40,000 a year on the debt owed to the UND School of Medicine and Health Sciences. The center reported the University of North Dakota is transitioning its residency program from the center, and the center needs to hire physicians to replace the resident physicians. The center reported that those facts, plus the need for a new computer system and the increasing trend in the number of uninsured patients at the center, have all had a significant impact on the center's ability to continue.

Pursuant to Section 21 of 2001 House Bill No. 1015, the Budget Section approved the Fargo Family HealthCare Center plan to address sustainability of programs and services and approved the forgiveness of \$395,000

of debt owed by the Fargo Family HealthCare Center to the UND School of Medicine and Health Sciences.

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 1999-2001 biennium. The University System also presented a comparison of projected and actual local funds revenue sources by each campus for the fiscal years ended 2000 and 2001.

College President Retention Awards

The Budget Section received a report from the North Dakota University System regarding the State Board of Higher Education policy for college president retention awards. The new executive compensation policy was established by the State Board of Higher Education as an incentive for presidents to continue in the University System. Presidential tenure has been declining nationally over the last 20 years and the North Dakota University System has had 14 new presidents and executive deans in the last nine years. North Dakota college president salaries, in most cases, do not compare well with regional peer institutions. The board's policy is intended to promote retention of institution presidents by providing them an additional payment at retirement based on years of service, beginning after six years of service with the maximum payment limited to the president's final annual base salary.

Capital Projects

During the 2001-2002 interim, the Budget Section received requests relating to the following University System capital projects:

- **University of North Dakota - Construction of a front entrance to the School of Medicine and Health Sciences building** - Pursuant to NDCC Section 15-10-12.1, the Budget Section approved the UND's request to increase other funds spending authority from \$350,000 to \$465,000 for construction of a front entrance to the UND School of Medicine and Health Sciences.
- **Williston State College - Health Science and Sports Complex project** - Pursuant to NDCC Section 48-02-20, the Budget Section approved the Williston State College request to increase other funds spending authority by \$750,000, and the total authorization from \$4,500,000 to \$5,250,000, for the Williston State College Health Science and Sports Complex project.
- **North Dakota State University - F Court student apartment building project** - Pursuant to NDCC Section 48-02-20, the Budget Section approved the North Dakota State University request to increase other funds spending authority by \$600,000 to complete the F Court student apartment building project.
- **Bismarck State College - Renovation of Schafer Hall** - Pursuant to NDCC Section 48-02-20, the Budget Section approved the Bismarck State College request to increase spending authority for renovation of Schafer Hall at Bismarck State College from \$596,000 to \$700,000, \$65,000 of which is from local funds related to lawsuit settlement funds from asbestos manufacturers and \$39,000 is from funds available in the capital assets line item.
- **Minot State University - Old Main/McFarland Auditorium renovation project** - Pursuant to NDCC Section 48-02-20, the Budget Section approved the Minot State University request to increase other funds spending authority by \$800,000 and total authorization from \$7,850,000 to \$8,650,000 for Minot State University's Old Main/McFarland Auditorium renovation project due to higher than estimated project costs.
- **University of North Dakota - Design and construction of School of Medicine and Health Sciences Center for Excellence in Neurosciences building and related facilities costs** - Pursuant to NDCC Section 15-10-12.1, the Budget Section approved the University of North Dakota request to increase federal funds spending authority by \$2,953,462 for design and construction of a UND School of Medicine and Health Sciences Center for Excellence in Neurosciences building (\$2,923,462) and for related facilities costs (\$30,000).
- **University of North Dakota - School of Medicine and Health Sciences laboratory renovation, laboratory equipment purchase, and related facilities costs** - Pursuant to NDCC Section 15-10-12.1, the Budget Section approved the request to increase federal funds spending authority by \$4,086,620 for the UND School of Medicine and Health Sciences to purchase a positron emission tomographic (PET) scanner (\$2,500,000), other related laboratory equipment (\$859,620), renovate existing facility space for a support laboratory (\$720,000), and related facilities costs (\$7,000).
- **University of North Dakota - School of Medicine and Health Sciences laboratory renovation** - Pursuant to NDCC Section 15-10-12.1, the Budget Section approved the UND School of Medicine and Health Sciences request to increase federal funds spending authority by \$400,000 to renovate existing facilities for laboratory space for conducting biomedical research projects, contingent upon receipt of a Center for Biomedical Research in Excellence grant.
- **Williston State College - Health Science and Sports Complex project** - Pursuant to NDCC Section 48-02-20, the Budget Section approved the Williston State College request to increase other funds spending authority by \$500,000 and the total authorization from \$5.25 million to

\$5.75 million for the Health Science and Sports Complex project.

- **North Dakota State University - Minard Hall addition** - Pursuant to NDCC Section 48-02-20, the Budget Section approved the North Dakota State University request to increase other funds spending authority from \$3 million to \$3.4 million for the Minard Hall addition project.
- **Carrington Research Extension Center - Feed mill and feedlot** - Pursuant to NDCC Section 48-02-20, the Budget Section approved the request to increase other funds spending authority from \$300,000 to \$310,000 for a feed mill and feedlot at the Carrington Research Extension Center.

Workforce Training Funds

Pursuant to Section 5 of Senate Bill No. 2020, the Budget Section received a report from the North Dakota University System on the workforce training funds raised in each region during the 2002 fiscal year. The state is divided into four regions, as summarized in the following chart:

Region	Regional Funds Raised in Fiscal Year 2002	Regional Funds Anticipated to Be Raised in Fiscal Year 2003
Northwest	\$40,150	\$20,000
Northeast	59,500	65,000
Southwest	0	0
Southeast	292,421	100,000
Total	\$392,071	\$185,000

DEPARTMENT OF HUMAN SERVICES Funding for Medicaid

Pursuant to Section 20 of 2001 House Bill No. 1012, the Budget Section received periodic reports from the Department of Human Services on the status of actual medical assistance expenditures compared to projections, excluding developmental disabilities grants, and whether the actual expenditures for the biennium are anticipated to exceed funding appropriated. The Budget Section learned through September 2002, the Department of Human Services has spent \$407.3 million. The total amount anticipated to be spent by the end of the biennium is \$676.3 million, of which \$183.7 million is from the general fund. This projection reflects general fund spending of \$16.3 million more than the legislative appropriation, reflecting the impact of the allotment reduction.

The Department of Human Services reported the following reasons for the increase in Medicaid expenditures:

- The number of eligible Medicaid recipients increased by about 5,000 for the biennium.
- The number of persons receiving services increased.
- The number of expensive medical cases increased.

- The utilization of outpatient hospital services exceeded original estimates by 22.3 percent.
- The actual net costs of drugs exceeded original estimates by 7.3 percent.
- The utilization of physicians' services increased 15.6 percent more than anticipated.

The Department of Human Services outlined an approach to deal with the Medicaid budget shortfall, including:

- The department issued a state employee travel "freeze."
- The department implemented a voluntary early retirement program.
- Vacant employee positions were left unfilled.
- The department committed to transfer approximately \$1 million in savings generated from other budget areas.
- Possible fiscal relief from the federal government in the form of the restoration of the federal matching percentage.
- Additional funds available through the Intergovernmental Transfer (IGT) process.

North Dakota Families Receiving Assistance From State Programs

The Budget Section received information from the Department of Human Services on the number of families in North Dakota receiving financial assistance from state programs, including temporary assistance for needy families (TANF), food stamps, medical assistance, and child care. The statewide average participation in North Dakota's assistance programs for calendar year 2001 was:

- 2,969 families in the TANF program.
- 6,042 households in the food stamp program.
- 43,050 enrolled recipients in the Medicaid program.
- 2,874 families in the child care program.

The Budget Section received information from the Department of Human Services on the number of child support enforcement cases in North Dakota. For the quarter ended December 31, 2001, there were 13,131 non-IV-D cases and 39,047 IV-D cases in North Dakota. A IV-D case is one where the custodial parent has received state and federal assistance. During calendar year 2001, the Department of Human Services received \$52.2 million for IV-D cases and \$32.4 million in collections for non-IV-D cases. The number of child support enforcement cases is increasing both nationally and in North Dakota.

DEPARTMENT OF COMMERCE

Status Reports and Performance Measures

Pursuant to Section 7 of 2001 Senate Bill No. 2019, the Budget Section received periodic reports on the status and performance measures of the Department of Commerce. The Department of Commerce reported its first anniversary was in August 2002 and significant progress has been made by the department. The department reported that North Dakota had experienced

gains in the number of people working in off-farm jobs, growth in sales tax revenue, increases in personal income, growth in tourism, growth of existing businesses, and increases in the startup of new businesses.

The Department of Commerce unveiled the six goals of the North Dakota Economic Development Foundation's strategic plan, which is to accelerate the creation of good quality jobs in North Dakota. The six goals are:

1. Develop a unified front for economic development based on collaboration, accountability, and trust.
2. Strengthen partnerships among the state's higher education system, economic development organizations, and private businesses.
3. Create quality jobs to retain North Dakota's current workforce and attract new high-skilled labor.
4. Create a strong marketing image to build on the state's numerous strengths, including workforce, education, and quality of place.
5. Accelerate job growth in diversified industry targets to provide opportunities for the state's long-term economic future.
6. Strengthen North Dakota's business climate to increase global competitiveness.

The department also targeted five industries for economic development in North Dakota. The five industries are:

1. Value-added agriculture.
2. Energy.
3. Advanced manufacturing.
4. Information technology.
5. Tourism.

The Department of Commerce reported on the performance measures within the department by presenting statistics relative to the accomplishments of each of the four divisions within the agency for the first year of the 2001-03 biennium. The four divisions are the Community Services Division, Economic Development and Finance Division, Tourism Division, and Workforce Development Division.

WORKERS COMPENSATION BUREAU Status of Risk Management Workers' Compensation Program

Pursuant to NDCC Section 65-04-03.1, the Budget Section received information from the Workers Compensation Bureau on the status of the risk management workers' compensation program. Effective July 1, 2001, 141 state agencies were consolidated into one account for purposes of workers' compensation pursuant to Section 65-04-03.1. Section 65-04-03.1 requires the Workers Compensation Bureau to use the combined payroll, premium, and loss history of the agencies involved to determine rates, dividends, assessments, and premiums. The Workers Compensation Bureau reported good progress and excellent results concerning 2001 House Bill No. 1015, which established a single workers' compensation account for all state entities. The

bill expires on July 1, 2003, and the Workers Compensation Bureau will be proposing legislation to continue the program. The estimated savings to the state for the period of July 1, 2001, to June 30, 2002, was \$1.469 million.

Additional Full-Time Equivalent Positions

The Budget Section received a report on additional FTE positions at the Workers Compensation Bureau pursuant to Section 2 of 2001 House Bill No. 1024. That section authorized up to 10 additional FTE positions and \$500,000 for related wages, salaries, and benefits for the Workers Compensation Bureau. At the time of the report, the Workers Compensation Bureau had hired 8.67 FTE positions to provide services previously provided under contract with an out-of-state vendor, consisting of two advocates within the Office of Independent Review and 6.67 FTE positions for information technology staff in the Workers Compensation Bureau's Information Services Department. Of the remaining 1.33 FTE positions, 1 FTE position is to fill a facility management position for the Workers Compensation Bureau office building under construction.

Workers Compensation Bureau Building

Pursuant to Section 5 of 2001 House Bill No. 1024, the Budget Section received periodic reports on the progress of construction and proposed rental space of the Workers Compensation Bureau building. The four-story building located at 1600 East Century Avenue will contain 111,900 square feet of office space, plus a 4,100 square-foot rooftop mechanical room. The total cost of the building project is estimated to be between \$12 million and \$14.5 million. The space for the Workers Compensation Bureau should be completed on May 1, 2003, and the space available for the other tenants completed on June 1, 2003.

The Workers Compensation Bureau will occupy the third and fourth floors and a small portion of the second floor. The Department of Commerce will occupy a majority of the second floor. Other agencies will occupy the remainder of the second floor and one-half of the first floor. Half of the first floor is dedicated to storage, building maintenance, and mechanical rooms. Initial rental fees are estimated at \$13 per square foot. The Workers Compensation Bureau will no longer pay rent and related costs, which amount to nearly \$500,000 per year.

Extraterritorial Workers' Compensation Insurance

Pursuant to NDCC Section 65-08.1-02, the Budget Section received a report on the bureau's plans for the provision of extraterritorial workers' compensation insurance. The Workers Compensation Bureau reported that when North Dakota employees are injured while temporarily and incidentally operating outside of North Dakota, the North Dakota employer could be found to be in noncompliance with other states' laws. Therefore, without a separate policy in the adjacent state to cover

the injured North Dakota employee, the North Dakota employer may have to pay penalties in the other state.

One solution to the problem is reciprocity agreements between states. The Workers Compensation Bureau has negotiated reciprocity agreements with seven states, including Montana and South Dakota. However, attempts to enter into a reciprocity agreement with the state of Minnesota have not been successful.

The committee learned a solution to the problem in Minnesota is the legislation adopted in 1993 and contained in NDCC Chapter 65-08.1. Chapter 65-08.1 allows the Workers Compensation Bureau to create a workers' compensation stock insurance company for the purposes of offering extraterritorial or other states' insurance. Section 65-08.1-02 states the casualty insurance organization may be established only upon the director's determination that the organization is needed to provide sufficient workers' compensation coverage for the employees and employers of this state and upon the approval of the Budget Section.

Pursuant to NDCC Section 65-08.1-02, the Budget Section approved the request for the Workers Compensation Bureau to establish a casualty insurance organization to provide extraterritorial workers' compensation insurance coverage. The Budget Section will receive an update regarding the implementation of this program at its December 2002 meeting.

INFORMATION TECHNOLOGY DEPARTMENT

Performance Measures

Pursuant to Section 9 of 2001 Senate Bill No. 2043, the Budget Section received a report from the Information Technology Department regarding the development of performance measures to assist the Legislative Assembly in determining the effectiveness and efficiency of the department. The Information Technology Department's performance measures are based on the following four business drivers:

1. Provide value to our customers.
2. Statewide direction and leadership.
3. Customer relationships and satisfaction.
4. Learning and growth.

Annual Report

Pursuant to NDCC Section 54-59-19, the Budget Section received the Information Technology Department's 2001-02 annual report. The annual report is composed of four sections:

- Section 1 - An executive summary that describes and quantifies benefits the state is realizing from investments in information technology.
- Section 2 - Information on the state's information technology planning process.
- Section 3 - A status report on the costs and benefits of large information technology projects, including a summary of each project completed in the last 12 months and an update of ongoing large information technology projects.

- Section 4 - Information on the department's performance, including a rate comparison and an update on the department's performance measures.

The Information Technology Department reported that seven of the 14 large Information Technology Department projects were completed on or under budget, resulting in total savings of \$1.8 million. For the remaining projects, the total cost overrun was approximately \$176,000.

The Information Technology Department reported that eight agencies provide 76 percent of the department's revenue, and out of the 74 services the department provides, approximately 73 percent of the department's revenue is generated from 16 services.

Enterprise Resource Planning System Initiative

The Budget Section received information from the Information Technology Department regarding the procurement and implementation of the enterprise resource planning (ERP) system. The ERP system is an initiative to replace the financial, human resources, and student administration systems for higher education and state government. PeopleSoft was selected as the vendor to supply the software and MAXIMUS to implement the ERP system. The PeopleSoft ERP system includes financial management, supply chain management, human resources and payroll, student information and contribution relations solutions, and portal software. The ERP system also includes enterprise performance management software that will be implemented in the future.

The department spent approximately \$282,907 of the \$7.5 million general fund appropriation provided by the 2001 Legislative Assembly for the ERP system initiative. The estimated ERP system initiative costs for the remainder of the 2001-03 biennium are:

PeopleSoft		
Software license	\$3,692,758	
Maintenance	997,045	
Training units	206,250	
Subtotal		\$4,896,053
MAXIMUS		6,200,000
Total		\$11,096,053

Under this agreement, the department paid PeopleSoft \$150,000 on August 1, 2002, and the remainder of the \$4,746,053 debt plus related interest of \$117,967 will be paid on August 1, 2003. The agreement allows the department to use the remaining ERP system initiative 2001-03 biennium appropriation of \$7,217,093 for implementation services performed by MAXIMUS.

Pursuant to NDCC Sections 54-16-04.2 and 54-59-05(4), the Budget Section approved the request of the Information Technology Department to increase other funds spending authority and the ERP system line item by \$5 million and to approve a financing proposal of \$4,896,053 to purchase software for the ERP system.

JOB SERVICE NORTH DAKOTA

Status of the Job Insurance Trust Fund

Pursuant to NDCC Section 52-02-17, the Budget Section received a report on the status of the job insurance trust fund. Job Service North Dakota reported that 1999 House Bill No. 1135 provides a seven-year time-frame to achieve targeted unemployment compensation fund reserve goals based in part on a national economic model that estimates the funds needed to pay unemployment claims for a one-year recessionary period based on current wages and historical claims. Also, 1999 House Bill No. 1135 shifted unemployment funding burdens to "negative balance" employers. The trust fund balance as of December 31, 2001, was \$30.8 million, which was slightly lower than the December 31, 2000, balance. This balance will allow Job Service North Dakota to only pay about one-fourth of targeted benefits. The trust fund is projected to reach the target balance within the seven-year period using the existing tax rate schedule.

ADJUTANT GENERAL/NATIONAL GUARD

National Guard Armory Survey

Pursuant to 2001 House Bill No. 1215, the Budget Section received information on a National Guard survey of all political subdivision-owned armories. The 2001 Legislative Assembly appropriated \$250,000 to be distributed on an equal matching fund basis for grants of up to \$25,000 per political subdivision for the maintenance and repair of political subdivision-owned armories. Priority was given to those projects for which the political subdivision contributes the highest ratio of funds for each dollar of state funds. Surveys were sent to mayors of 18 cities, with 14 responding, requesting assessments of major maintenance and repair projects. The projects were to have a direct benefit to the full-time National Guard personnel.

The state match was calculated based on an equal share match with the participating city or the remaining cost of the proposed projects for those cities providing more than an equal share of funding. Projects were funded from each of the 14 cities requesting the match. Prioritizing was not necessary because the total state match did not exceed the \$250,000 appropriated after each political subdivision received the amount of state match for which it was qualified according to the guidelines in the bill. The total recommended state match for armory repair and maintenance projects was \$249,111.

Pursuant to the provisions of 2001 House Bill No. 1215, the Budget Section accepted the National Guard's survey of all political subdivision-owned armories and project funding recommendations.

COUNTRY OF ORIGIN LABELING

The Budget Section received information from the State Department of Health on the department's enforcement of NDCC Section 19-02.1-25 relating to the country of origin labeling and provisions in the United States Department of Agriculture 2002 farm bill relating to country of origin labels and the impact on North Dakota. Section 19-02.1-25 requires retailers to indicate by label

or other written identification the country of origin of the fresh beef, lamb, and pork available for sale to customers.

The State Department of Health has responsibility for enforcement of the labeling law and reported current federal laws do not mandate country of origin labeling and any imported meat slaughtered or further processed in this country is considered domestic supply; the 2002 federal farm bill provides for voluntary country of origin labeling guidelines to be adopted by September 30, 2002; mandatory federal country of origin labeling regulations are anticipated to be implemented by 2004; and under the new farm bill, in order for a commodity to be labeled a product of the United States of America, it must have been born, raised, and processed in the United States.

TRANSFERS TO THE STATE TUITION FUND

The Budget Section received a report from the Department of Public Instruction regarding duplicative payments received for administrative expenses and any related transfers to the state tuition fund pursuant to NDCC Section 15.1-02-14. The Department of Public Instruction reported it did not receive any federal or other money for which a general fund appropriation had been provided. The federal grants received by the department were used to supplement existing funds and do not replace general fund money.

ELECTRONIC CHECK SIGNATURE SERVICES

The Budget Section received information from the Attorney General's office regarding the Attorney General's opinion on whether the State Treasurer's use of electronic check signature services provided by the Information Technology Department is in compliance with NDCC Section 54-27-08. The Attorney General's office examined whether the use of an electronic signature would constitutionally challenge the State Treasurer's ability to receive all public money and disburse funds when received. According to case law, the transfer of the administrative function of putting a signature on a warrant from a constitutional office can be accomplished without disrupting the constitutional duty of the office. The State Treasurer by letter informed the Budget Section that as of December 1, 2002, the signing of state warrants will be moved from the State Treasurer to the Information Technology Department. The letter indicates the State Treasurer had requested additional security features and monitoring elements for the check-signing process that were not included due to cost requirements of the Information Technology Department.

STATUS OF THE STATE BOARD OF AGRICULTURAL RESEARCH AND EDUCATION

Pursuant to 2001 Senate Bill No. 2021 and NDCC Section 4-05.1-19, the Budget Section received an update on the status of the State Board of Agricultural

Research and Education. The State Board of Agricultural Research and Education has been in existence for five years. The Budget Section received information on State Board of Agricultural Research and Education livestock research, including the beefline initiative. All beefline projects were done on a cooperative basis with the agricultural experiment stations and the agricultural research centers.

CORRESPONDENCE FROM ETHANOL PLANTS

Pursuant to 2001 Senate Bill No. 2019, the Budget Section received reports from the North Dakota ethanol plants that received production incentives from the state. The Alchem, Ltd., LLP plant was the only plant to receive production incentives from the state during calendar year 2000. The Budget Section learned that after deducting the payments received from the state, the Alchem, Ltd., plant did produce a profit. The Alchem, Ltd., and the Archer Daniels Midland Company plants received production incentives from the state during calendar year 2001. The Budget Section learned that both plants produced a profit after deducting the payments received from the state.

LEGISLATIVE HEARINGS FOR FEDERAL BLOCK GRANTS

Background

The Budget Section was informed that of the 14 block grant programs listed in the *2001 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 appropriations hearing for the Department of Commerce during the 2003 legislative session.

Recommendation

The Budget Section recommends House Concurrent Resolution No. 3001 to authorize the Budget Section to hold public legislative hearings required for the receipt of new federal block grant funds during the period from the recess or adjournment of the 58th Legislative Assembly through September 30, 2005.

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, 2003, and June 30, 2005. The report indicated for the 2001-03 biennium, state agencies and institutions anticipate receiving \$1.963 billion of federal funds, approximately \$32 million more than the amount appropriated by the 2001 Legislative Assembly. For the 2003-05 biennium, state agencies and institutions anticipate receiving approximately \$1.935 billion of federal funds. The 2003-05 biennium requests, if funded, would require \$269,998,769 of general fund matching dollars, \$5,297,200 less than that provided for the 2001-03 biennium. The 2003-05 biennium requests are based on a

95 percent budget request included in the Governor's 2003-05 budget guidelines.

LEGISLATIVE COUNCIL STAFF REPORTS

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

- *Fifty-Seventh Legislative Assembly Analysis of Changes to the Executive Budget - 2001-03 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 includes an analysis of various special funds and statistical information on state appropriations.
- *State Agency "Irregular" Salary Payments Survey.*
- *2001-03 Biennium Report on Compliance with Legislative Intent.* The report provided information regarding agency compliance with the legislative intent included in the agencies' 2001-03 biennium appropriations, information on the status of selected special funds, and agencies' activities through December 31, 2001, and later, as appropriate.
- *Preliminary Outlook - North Dakota 2003-05 General Fund Budget October 2002 Update.* The report provided a preliminary outlook regarding North Dakota's 2003-05 biennium general fund budget and related information.

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 2003 legislative session.

The Budget Committee on Government Services, Representative Jeff Delzer, Chairman, toured the West Central Human Service Center, International Peace Garden, North Central Human Service Center, and the State Fair Association.

The Budget Committee on Government Administration, Senator Tim Mathern, Chairman, toured the Veterans Home, Southeast Human Service Center, Division of Independent Study, and the Agronomy Seed Farm.

The Budget Committee on Human Services, Representative Amy Warnke, Chairman, toured the Northeast Human Service Center, North Dakota Vision Services - School for the Blind, Mill and Elevator, Lake Region Human Service Center, School for the Deaf, Camp Grafton, and the Developmental Center.

The Higher Education Committee, Senator David E. Nething, Chairman, toured Valley City State University, State College of Science, North Dakota State University, Northern Crops Institute, Upper Great Plains Transportation Institute, North Dakota State University Extension Service, North Dakota Agricultural Experiment Station, University of North Dakota, University of North Dakota School of Medicine and Health Sciences, Mayville State

University, Lake Region State College, Bismarck State College, Minot State University - Bottineau, Forest Service, Minot State University, North Central Research Extension Center, Williston State College, Williston Research Extension Center, and Dickinson State University.

The Budget Section tour group, Representative Ken Svedjan, Chairman, toured the State Penitentiary, Roughrider Industries, Missouri River Correctional Center, Youth Correctional Center, James River Correctional Center, State Hospital, and the South Central Human Service Center.

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 14, 2001, meeting to the October 8, 2002, meeting, the Budget Section considered 56 requests, all of which were approved. The attached appendix provides a description of each agency request considered by the Budget Section.

OTHER REPORTS

The Budget Section received a report on the University of North Dakota Energy and Environmental Research Center, which is a research, development, demonstration, and commercialization facility. The Energy and Environmental Research Center has experienced growth in contract revenue since its expansion in 1994, and the facility is utilizing all existing space. Therefore, a project is planned to expand laboratories and office space to accommodate 92 additional employees. The estimated cost of the project is \$8 million, and the committee learned the Grand Forks Economic Development Corporation may contribute up to \$1 million toward the project. The financing structure for the expansion is a lease revenue bond with the University of North Dakota Foundation as the lessor. The foundation would issue lease revenue bonds and enter into an agreement with the State Board of Higher Education to lease the facilities. The University of North Dakota would make the lease payments directly to the trustee.

The Budget Section received a report on the development and construction of the University of North

Dakota Hilton Garden Inn on the west campus. The land lease for the hotel is based on fair market value and was approved by the State Board of Higher Education. The hotel is privately owned and is to be completed in November 2002. The land lease provisions allow for:

- University of North Dakota approval of the interior and exterior design of the building.
- The right of first refusal for the university if the property is placed for sale.
- University of North Dakota approval required for the lease to be assigned.
- Rent to be paid to the university while the hotel is being built.
- The property must be constructed by 2004.

The Budget Section received a report on North Dakota State University's flood damage from the June 2002 storms. On June 9, 2002, the Fargo/Moorhead area received three to four inches of rain in approximately two hours. The lower level of the Memorial Union sustained extensive water damage as the result of muddy water coming into the building from uncapped holes located in the bottom of steamline trenches and a claim was filed with the contractor's insurance for an estimated \$200,000 in damages to Memorial Union. Water from the steamline construction trenches also entered Ceres Hall through uncapped construction pipes and a claim for the damage was filed with the contractor's insurance for the damages. Churchill Hall sustained damage from roof drain runoff, with estimated damages of \$75,000, and a claim was filed with the state fire and tornado fund. A federal or state disaster was not proclaimed as a result of the storm, therefore, Federal Emergency Management Agency (FEMA) coverage is not available.

The Budget Section received a report on the Veterans Home performance audit. The Administrative Committee on Veterans Affairs agreed with the auditor's findings in almost every recommendation, and the committee outlined corrective action for each recommendation.

This report presents Budget Section activities through October 2002. 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 the beginning of the 2003 Legislative Assembly in January.

APPENDIX

Pursuant to NDCC Sections 54-16-04, 54-16-04.1, and 54-16-04.2, the Budget Section considered 56 agency requests that were authorized by the Emergency Commission. All requests were approved by the Budget Section. The following is a list of agency requests approved through October 2002:

1. Adjutant General

- June 14, 2001 - To increase other funds spending authority and the capital improvements line item by \$100,000 to accept federal funds from the Division of Emergency Management for the completion of the addition to the Fraine Barracks Emergency Operations Center.
- October 8, 2002 - To increase spending authority by \$5 million to accept federal funds from the National Guard Bureau for Army Guard contracts line item for maintenance and repair projects at federally supported assets located at the Camp Grafton Training Facility, Devils Lake, and the Raymond Bohn Armory Complex, Bismarck.

2. Aeronautics Commission

- June 26, 2002 - To transfer \$562,000 of spending authority from the grants line item to the operating expenses line item for expenses associated with airport maintenance projects at 10 general aviation airports (\$112,000), security analysis at four air carrier airports (\$68,000), airport master plans at four commercial service airports (\$200,000), updating the state's air service report (\$106,000), and safety inspections at 85 general aviation airports (\$76,000).

3. Department of Agriculture

- June 14, 2001 - To increase federal funds spending authority by \$393,000 to accept funds available from the Environmental Protection Agency 319 nonpoint pollution prevention program to accelerate the completion of digitized soil maps used to assess potential ground water contamination from agricultural pesticide uses.
- October 9, 2001 - To increase federal funds spending authority by \$180,000, the operating expenses line item (\$150,000), and the State Board of Animal Health line item (\$30,000) to promote specialty crops and value-added agriculture projects.
- April 17, 2002 - To increase other funds spending authority by \$113,228 for salaries (\$35,000) and operating expenses (\$78,228) to accept federal funds from the Environmental Protection Agency for pesticide storage security education, to convert state pesticide labels to electronic format, and to monitor the pesticide products sold in North Dakota for proper registration.

- April 17, 2002 - To authorize one FTE position and increase other funds spending authority and the State Board of Animal Health line item by \$101,394 to accept passthrough funds from the State Department of Health relating to the federal bioterrorism grant for an animal disease outbreak rapid response program.
- April 17, 2002 - To increase other funds spending authority and the State Board of Animal Health line item by \$80,000 to accept federal funds from the United States Department of Agriculture national scrapie eradication program to provide resolution of cases when animals have been infected and exposed to scrapie and to minimize the impact on producers.

4. Bismarck State College

- June 14, 2001 - To increase other funds spending authority from higher than anticipated fiscal year 2001 tuition collections and the operating expenses line item by \$75,000 for increased utility costs.

5. Children's Services Coordinating Committee

- June 14, 2001 - To increase the grants line item by \$750,000 of special funds from "refinancing" activities (federal funds received through the Department of Human Services) to be provided to the regional and tribal children's services coordinating committees.

6. Department of Commerce

- October 9, 2001 - To increase federal funds spending authority and the Agricultural Products Utilization Commission line item by \$700,000 to provide grants for value-added businesses, exploration of nontraditional crops and livestock, and foreign trade missions.
- January 16, 2002 - To increase federal funds spending authority by \$2,114,313 for salaries (\$255,497), operating expenses (\$22,500), equipment (\$8,000), and grants (\$1,828,316) for a technical skills training project addressing shortages in health-related occupations.
- October 8, 2002 - To increase spending authority by \$117,595 to accept federal funds from the United States Department of Health and Human Services (state commission administration and professional development assistance training) for salaries line item (\$45,720); operating expenses line item (\$63,875); equipment line item (\$8,000); and one FTE position for the North Dakota State Commission on National and Community Service, created by Executive Order 2002-02.3 (revised July 19, 2002) and as authorized by the federal National and Community Services Act of 1990, to develop and communicate a statewide vision to

- encourage citizen engagement in service to youth and community.
7. Department of Corrections and Rehabilitation
 - June 14, 2001 - To transfer \$150,000 from the program services line item and \$500,000 from the security and safety line item to increase the support services line item by \$650,000 for increased inmate medical costs.
 - January 16, 2002 - To accept federal pass-through funds of \$67,920 from the Attorney General's office for inmate treatment programs at the James River Correctional Center (\$40,320), for the Prisons Division cognitive program (\$21,600), and for bullet-proof and stabproof vests (\$6,000).
 - October 8, 2002 - To increase spending authority by \$125,000 to accept federal funds from the United States Department of Justice, Office of Justice, Victims of Crime Act (VOCA), for crime victims services line item to passthrough to local agencies that assist crime victims.
 8. Council on the Arts
 - April 17, 2002 - To increase other funds spending authority by \$107,400 to accept federal funds from the National Endowment for the Arts for support of various art organizations as well as educational and arts programming in underserved areas.
 9. Division of Emergency Management
 - June 14, 2001 - To increase spending authority by \$14,841,660 to accept federal funds (\$13,071,870) from FEMA and from a loan from the Bank of North Dakota (\$1,769,790) for salaries (\$136,800), operating expenses (\$27,360), equipment (\$15,000), and grants (\$14,662,500) for expenses associated with flooding during the spring of 2001.
 - June 14, 2001 - To increase spending authority by \$868,216 to accept federal funds (\$766,759) from FEMA and from a loan from the Bank of North Dakota (\$101,457) for salaries (\$6,850), operating expenses (\$9,920), equipment (\$5,200), and grants (\$846,246) for expenses associated with severe weather during November 2000.
 - April 17, 2002 - To increase other funds spending authority and the grants line item by \$777,000 to accept federal funds from the United States Department of Justice state domestic preparedness equipment program for grants to be distributed primarily to local government units and other state agencies to purchase first responder equipment.
 - June 26, 2002 - To increase other funds spending authority by \$2,794,000 for salaries and wages (\$207,500), operating expenses (\$66,500), and grants (\$2,520,000) to accept federal funds from the United States Department of Justice state domestic preparedness program for equipment grants to be distributed primarily to local government units and other state agencies.
 10. Department of Financial Institutions
 - October 8, 2002 - To increase spending authority by \$265,000 to accept federal funds from FEMA for grants line item for predisaster mitigation program to conduct local and regional mitigation planning activities to meet the requirements of the Disaster Management Act of 2000.
 - October 8, 2002 - To increase spending authority by \$1,955,000 to accept federal funds from FEMA (\$1,725,000) and to accept other funds (\$230,000), from the proceeds of a loan from the Bank of North Dakota (borrowed in accordance with the provisions of NDCC Section 37-17.1-23) for salaries line item (\$65,400); operating expenses line item (\$21,110); and for grants line item (\$1,868,490) for expenses related to the spring 2002 flooding disaster declaration.
 11. Game and Fish Department
 - January 16, 2002 - To increase federal funds spending authority by \$324,000 for salaries and wages (\$200,000), operating expenses (\$24,000), and grants (\$100,000) to develop a nongame wildlife conservation strategy and gather information on nongame wildlife species in North Dakota.
 - April 17, 2002 - To authorize three FTE positions and to increase other funds spending authority and the private land habitat program line item by \$1.5 million to accept funds from the game and fish fund for the accelerated access program to increase the amount of private land open to sportsmen.
 12. State Department of Health
 - January 16, 2002 - To increase federal funds spending authority by \$823,878 and the capital improvements line item for higher than anticipated costs per square footage (\$338,817) and an additional 1,700 square feet (\$485,061) to the Laboratory Building additional project.
 - January 16, 2002 - To increase spending authority by \$5,445,230 to accept federal funds (\$5,245,230) and passthrough funds from the State Water Commission (\$200,000) from the water development trust fund as approved in 2001 House Bill No. 1023 for salaries and wages (\$158,573),

operating expenses (\$809,937), and grants (\$4,476,720) for bioterrorism efforts, the national pharmaceutical stockpile program, emerging diseases, immunization programs, women, infants, and children (WIC) program, breast and cervical cancer screening, leaking underground storage tank (LUST) cleanup in Mandan, non-point source water projects, and family violence services.

- April 17, 2002 - To authorize 10 FTE positions and increase other funds spending authority by \$6,319,495 to accept federal funds from the Centers for Disease Control and Prevention bioterrorism supplemental grant (\$5,826,910) and the Health Resources Services Administration bioterrorism grant (\$492,585) for salaries (\$519,702), operating expenses (\$3,338,251), equipment (\$424,632), and the grants line item (\$2,036,910) for bioterrorism response programs.

13. Department of Human Services

- June 14, 2001 - To increase the federal funds spending authority and the grants line item by \$3,806,147 for providing grants to individuals under the low-income home energy assistance program (LIHEAP).
- June 14, 2001 - To increase the federal funds spending authority and the grants line item by \$2,125,000 to be provided to counties for reimbursement of child welfare-related administrative costs (\$1.6 million) and to the Children's Services Coordinating Committee for assistance to regional and tribal children's services coordinating committees (\$525,000).
- June 14, 2001 - To transfer \$250,000 of general fund appropriation authority from the State Hospital to the grants line item of the medical services program to provide additional general fund money to use as state matching funds under the Medicaid program if needed to cover the costs of the program for the 1999-2001 biennium.
- October 9, 2001 - To increase federal funds spending authority by \$1,128,600 to accept Older Americans Act funds for operating expenses (\$497,784) and the grants line item (\$630,816) to analyze the needs of family caregivers in North Dakota and to develop a service delivery system to address identified needs.
- April 17, 2002 - To increase other funds spending authority by \$244,346 and the operating expenses line item (\$54,520) and the grants line item (\$189,826) to accept funds from a Bush Foundation grant for providing professional development training for early childhood education personnel in the state.

- June 26, 2002 - To increase other funds spending authority and the grants line item by \$457,000 to accept federal funds for the family nutrition program of the food stamp program to pass through to the NDSU Extension Service, which administers the family nutrition program.
- October 8, 2002 - To increase spending authority by \$18,839,639 to accept federal funds (\$18,172,779) from the United States Department of Health and Human Services (\$10,598,175) and the United States Department of Agriculture (\$7,574,604) and other funds from the agency's child support collections (\$666,860) for grants - assistance payments line item (\$18,839,639) to be used for temporary assistance for needy families (TANF) (\$3,130,404); for child care assistance (\$1,053,433); for low-income home energy assistance (LIHEAP) (\$7,081,198); and for food stamp - electronic benefit transfer (\$7,574,604); resulting from increased caseload and because of changes to federal regulations that will provide funding for additional benefits being available to recipients.

14. Information Technology Department

- June 14, 2001 - To increase other funds spending authority by \$3.5 million to accept funds from other state agencies and allow for payment for various services contracted by the Information Technology Department on behalf of state agencies, with outside vendors for software development, consulting services, and related technology.
- January 16, 2002 - To increase federal funds spending authority by \$310,000 and the operating expenses line item to develop technical architecture, data standards, and implement high-priority criminal justice information-sharing projects.
- April 17, 2002 - To increase the other funds spending authority and the enterprise resource planning system line item by \$5,000,000 and to approve a financing proposal of \$4,896,053 to purchase software for the ERP system.

15. Labor Department

- January 16, 2002 - To accept federal funds (\$51,288) and use carryover federal funds (\$28,926) from the 1999-2001 biennium for a total of \$80,214 for operating expenses associated with fair housing enforcement (\$61,554) and equal employment (\$18,660).

16. Mill and Elevator Association

- October 8, 2002 - To increase special funds spending authority by \$3,500,000, for salaries line item (\$300,000) and for operating expenses line item (\$3,200,000) for insurance premiums (\$1,100,000); overtime (\$300,000); repairs and utilities

- (\$1,150,000); demurrage (\$150,000); laboratory supplies and fumigations (\$300,000); and interest expense (\$500,000) because of higher than anticipated expenses resulting from the aftermath of September 11 events and the Mill and Elevator Association's record production and shipment volumes.
17. North Dakota State University
 - June 14, 2001 - To increase spending authority (\$12.5 million) for a line of credit from the Bank of North Dakota to pay expenses relating to the 2000 flood disaster pending receipt of funds from FEMA and/or insurance carriers.
 18. Parks and Recreation Department
 - October 9, 2001 - To transfer \$715,000 from the grants line item to the equipment line item (\$215,000) to purchase snowmobile trail grooming equipment and to the capital improvements line item (\$500,000) for flood damage repairs and construction of Devils Lake and Turtle River State Parks.
 - April 17, 2002 - To transfer \$1,261,063 from the grants line item to the operating expenses line item (\$115,063), equipment line item (\$200,000), and capital projects line item (\$946,000) to reflect anticipated expenditures for FEMA construction projects and recreational trail program projects.
 - April 17, 2002 - To establish a \$1.4 million line of credit at the Bank of North Dakota pursuant to NDCC Section 54-16-13 to pay the required match for FEMA reimbursement and other expenses relating to June 2000 flood damage at Turtle River State Park.
 - April 17, 2002 - To increase other funds spending authority by \$850,000 and the salaries line item (\$69,850), operating expenses line item (\$100,150), equipment line item (\$35,000), and the grants line item (\$645,000) to accept federal funds for the On-A-Slant Mandan Indian Village reconstruction project and for land and water conservation projects.
 - October 8, 2002 - To increase other funds spending authority by \$150,000 for operating expenses line item (\$135,000) and extraordinary repairs line item (\$15,000) for expenses related to park operations, moving, and geothermal lighting.
 19. Department of Public Instruction
 - October 9, 2001 - To increase federal funds spending authority by \$5,483,750 (\$49,350 for salaries and wages, \$5,488 for operating expenses, and \$5,428,912 for grants) for school repairs, renovations, and technology costs.
 20. Public Service Commission
 - October 8, 2002 - To increase other funds spending authority for the operating expenses line item by \$69,000 from the Public Service Commission valuation fund to pay expenses related to the analysis, research, and hearing for a telecommunications utility's request for a proposed fee schedule for interconnection, unbundled network elements, and resale.
 21. Securities Commissioner
 - June 26, 2002 - To increase other funds spending authority and the operating expenses line item by \$200,000 from funds in the investor restitution fund for repaying investors.
 22. University of North Dakota
 - June 14, 2001 - To increase spending authority (\$12 million) for a line of credit from the Bank of North Dakota to pay expenses relating to the 1997 flood disaster pending receipt of funds from FEMA and/or insurance carrier reimbursements.
 23. Department of Transportation
 - October 9, 2001 - To transfer \$392,000 of federal funds from the grants line item to the operating expenses line item relating to the development of an intelligent transportation system - commercial vehicles operations deployment.
 - October 9, 2001 - To increase federal funds spending authority and the equipment line item by \$104,100 to accept funds from the Federal Highway Administration to provide an anti-icing system for the Buxton overpass.
 - October 9, 2001 - To increase federal funds (\$59 million from federal emergency relief funds) and special funds (\$12 million from a Bank of North Dakota loan for the state matching requirement) spending authority by \$71 million and the operating expenses line item (\$4 million), the capital improvements line item (\$50 million), and the grants line item (\$17 million) for emergency grade raises in the Devils Lake Basin.
 - April 17, 2002 - To transfer \$70,000 from the grants line item to the equipment line item to purchase a computer server for use in the department's geographic information systems (GIS) applications.
 24. State Board for Vocational and Technical Education
 - April 17, 2002 - To increase the operating expenses line item by \$230,000 to accept federal funds from the United States Department of Education (\$65,000) for the development of a curriculum to be used for vocational education finance career programs and approval for a line item transfer (\$165,000) from the grants line item to the operating expenses line item for assuming administrative responsibilities for the school-to-work initiative previously with the Bismarck Public Schools.

BUDGET COMMITTEE ON GOVERNMENT ADMINISTRATION

The Budget Committee on Government Administration was assigned three studies. Section 3 of Senate Bill No. 2007 provided that the Legislative Council study the management structure and oversight of the Veterans Home and the selection process for the commandant or administrator of the home. Section 14 of House Bill No. 1003 provided that the Legislative Council study the Racing Commission, including its authority to schedule, promote, support, and regulate live or simulcast racing in North Dakota. Section 5 of Senate Bill No. 2159 provided that the Legislative Council study highway construction and maintenance funding, including revenue sources and distribution formulas for the state, cities, and counties. Committee members were Senators Tim Mathern (Chairman), John M. Andrist, Dave Nething, David O'Connell, and Tom Trenbeath and Representatives Larry Bellew, Curtis E. Brekke, Rex R. Byerly, Bruce Eckre, Rod Froelich, Kathy Hawken, Keith Kempenich, William E. Kretschmar, Andrew G. Maragos, Lisa Meier, Laurel Thoreson, Elwood Thorpe, and Dave Weiler.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2002. The Council accepted the report for submission to the 58th Legislative Assembly.

VETERANS HOME STUDY

Section 3 of Senate Bill No. 2007 provided for a Legislative Council study of the management structure and oversight of the Veterans Home and the selection process for the commandant or administrator of the home. The study also included a review of the timing of general fund expenditures by the Veterans Home.

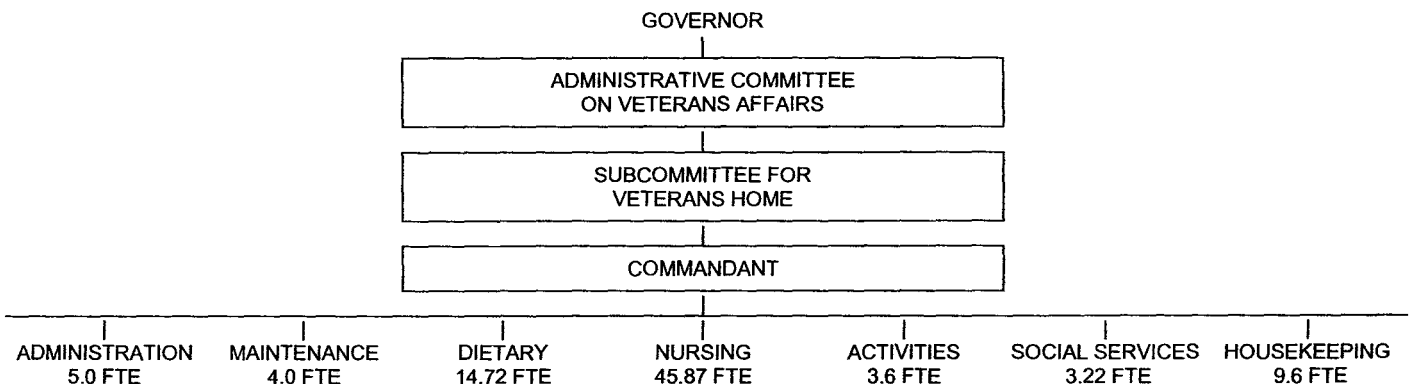
Management Structure and Oversight

Statutory provisions related to the management structure and oversight of the Veterans Home and the selection process for the commandant are included in North Dakota Century Code (NDCC) Chapters 37-15 and 37-18.1.

The Veterans Home is under the direct supervision and governance of the Administrative Committee on Veterans Affairs. The Administrative Committee on Veterans Affairs consists of three ex officio nonvoting members and 15 voting members. The Adjutant General, the center director of the Veterans Administration, and the executive director of Job Service North Dakota are the ex officio members. The Governor appoints the other 15 members--three of whom are nominated by the American Legion, three by the Veterans of Foreign Wars, three by the Disabled American Veterans, three by the Veterans of World War II, Korea, and Vietnam (AMVETS), and three by the Vietnam Veterans of America. From its membership the Administrative Committee on Veterans Affairs designates two subcommittees--one responsible for oversight of the Veterans Home and one responsible for the oversight of the Department of Veterans Affairs.

The Administrative Committee on Veterans Affairs appoints the commandant of the Veterans Home. The commandant must be a North Dakota resident and a veteran, have a four-year college degree and a North Dakota nursing home administrator's license, and live in the commandant's residence at the Veterans Home. The commandant is appointed for two-year terms, beginning on July 1 of each odd-numbered year. The commandant of the Veterans Home is responsible for appointing all other officers needed to operate the home, subject to legislative appropriations.

The Veterans Home organizational structure is presented below:



The committee learned the following regarding the oversight of the Veterans Home:

- The Veterans Home subcommittee reviews information relating to the Veterans Home, including reports on daily activities; daily resident census reports; minutes of safety, inspection, and fire meetings; State Department of Health and

federal Centers for Medicare and Medicaid Services (CMS) surveys; audits; and budgetary information;

- The Veterans Home subcommittee, in biennially selecting a commandant, conducts an evaluation in May of each odd-numbered year which considers the commandant's performance, input

from residents and staff, and the dedication of the commandant;

- The Administrative Committee on Veterans Affairs began placing a greater emphasis on its oversight and supervision of the Veterans Home during the 2001-02 interim by meeting monthly rather than quarterly and by changing its subcommittee structure by expanding the membership of the Veterans Home subcommittee from seven to eight members and reducing the size of the Department of Veterans Affairs subcommittee from seven to six members;
- Representatives of the Administrative Committee on Veterans Affairs indicated that the current selection process for the commandant works well and does not need to be changed; and
- Members of the Administrative Committee on Veterans Affairs and other veterans organizations discussed the possibility of reducing the size of the Administrative Committee on Veterans Affairs, with testimony supporting and opposing any change in the membership size of the committee.

Administrative Committee on Veterans Affairs - History and Compensation

The Administrative Committee on Veterans Affairs was created by the Legislative Assembly in 1971. The committee originally consisted of 12 voting members--three from the American Legion, three from the Veterans of Foreign Wars, three from the Disabled American Veterans, and three from the Veterans of World War I, USA. The committee membership was expanded in 1985 by three members from 12 to 15. The three additional members represent the Vietnam Veterans of America. The 1985 Legislative Assembly also replaced the Veterans of World War I, USA, with the Veterans of World War II, Korea, and Vietnam (AMVETS). Since its inception, statutory provisions relating to the Administrative Committee on Veterans Affairs have precluded committee members from being compensated for performance of their duties; however, members receive reimbursement for travel expenses in connection with their duties.

Budget and Operations

The Veterans Home consists of a basic care unit and a skilled nursing care unit. The basic care unit is licensed for 112 beds, and the skilled nursing care unit is licensed for 38 beds. The average length of stay for

individuals in the skilled nursing care unit is three years while the average length of stay for residents in the basic care unit is seven years.

The following schedule presents the legislative appropriations and authorized FTE positions for the Veterans Home for recent bienniums:

Biennium	FTE	General Fund	Estimated Income	Total
1997-99	82.71	\$2,038,504	\$5,370,495	\$7,408,999
1999-2001	84.61	\$2,272,926	\$6,150,712	\$8,423,638
2001-03	87.01	\$3,332,074	\$6,099,935	\$9,432,009

Sources of funding for the Veterans Home include the general fund, medical assistance funding, federal Veterans Administration funding, rent collections from residents, interest income, income from permanent lands distributed by the state Land Department, meal income, and miscellaneous income.

The committee learned that the Veterans Home receives between \$130,000 and \$140,000 per month from the federal Veterans Administration per diem paid on behalf of eligible veterans. The Veterans Administration rates were \$22.93 per day for the basic care unit and \$51.38 per day for the skilled care unit in federal fiscal year 2001 and \$24.40 per day for the basic care unit and \$53.17 per day for the skilled care unit in federal fiscal year 2002. The committee learned that during the 2001-02 interim the Veterans Home began applying for the Veterans Administration payments on a monthly rather than quarterly basis.

North Dakota Century Code Section 37-15-14 states that the Veterans Home general fund appropriation is only to be used for expenditures at the Veterans Home when special and federal funds of the Veterans Home are not available to pay for Veterans Home expenses. Based on information provided by the Office of Management and Budget, the committee learned that funding codes have been assigned in the statewide accounting system requiring expenditures to be charged first to special funds; however, agencies do have the flexibility to change these codes based on funding availability. The committee learned that as of February 2001, the Veterans Home had spent its entire general fund appropriation for the 1999-2001 biennium while the Veterans Home special fund cash balance was \$704,000. The cash balance in the Veterans Home special fund at the end of the 1999-2001 biennium was \$300,000.

At each committee meeting the Veterans Home reported on the status of its 2001-03 budget and operations. The status of the Veterans Home budget through July 2002 is listed below.

	Appropriation	Percentage of Total Appropriation	Expenditures Through July 2002	Percentage of Total Spent
2001-03 biennium appropriations and expenditures by funding source				
Salaries and wages	\$6,908,537	72.9%	\$3,520,578	71.9%
Operating expenses	2,137,631	22.6%	1,165,710	23.8%
Equipment	88,675	.9%	29,516	.6%
Capital improvements	344,460	3.6%	178,523	3.7%
Total	\$9,479,303	100%	\$4,894,327	100%

	Appropriation	Percentage of Total Appropriation	Expenditures Through July 2002	Percentage of Total Spent
Federal funds	\$3,123,000	33.0%	\$1,030,631	21.1%
Special funds	2,976,935	31.4%	1,709,518	34.9%
General fund	3,379,368 ¹	35.6%	2,154,178	44.0%
Total	\$9,479,303	100%	\$4,894,327	100%

¹ This amount includes \$47,294 for the agency share of the \$5,000,000 funding pool appropriated to the Office of Management and Budget for special market equity salary adjustments for classified employees.

	Federal Funds	Special Funds	Total Other Funds
2001-03 biennium appropriation of estimated income	\$3,123,000	\$2,976,935	\$6,099,935
Projected collections through July 2002	\$1,611,459	\$1,498,131	\$3,109,590
Actual collections through July 2002	1,879,006	1,524,440	3,403,446
Actual over (under) projections to date	\$167,547	\$26,309	\$293,856

The committee learned that the 2001-03 Veterans Home budget was based on 95 percent occupancy in the skilled care unit and 88 percent occupancy in the basic

care unit. The committee reviewed the number of vacant beds and the occupancy percentage at the Veterans Home since 1997 as follows:

	Skilled Care		Basic Care	
	Average Number of Vacant Beds	Occupancy Percentage	Average Number of Vacant Beds	Occupancy Percentage
January 1997 - December 1998	0.7	98.2%	14.3	87.2%
January 1999 - December 2000	1.1	97.1%	14.2	87.3%
January 2001 - December 2001	.6	98.4%	20.5	81.7%
January 2002 - July 2002	.1	99.7%	14.6	87.0%

The committee heard testimony from representatives of the Administrative Committee on Veterans Affairs and the Veterans Home that:

1. Broadening statutory eligibility criteria for the basic care unit of the home may reduce the number of vacant beds.
2. Reducing the residency requirement for veterans from one year to 30 days could allow easier access to the Veterans Home for veterans who live in surrounding states.
3. Eligibility for placement in the skilled care unit of the Veterans Home is determined by Medicaid regulations; therefore, veterans from other states are eligible for placement in the skilled care unit.
4. Veterans homes in 26 states and private nursing homes consider a veteran's service-connected compensation as a source of income when calculating a veteran's contribution of care. The Veterans Home does not consider this income because of a statutory limitation.

The Administrative Committee on Veterans Affairs suggested the following statutory changes relating to the Veterans Home:

1. Reduce the residency requirement for veterans to be admitted to the Veterans Home from one year to 30 days.
2. Change admission requirements for spouses and surviving spouses of veterans by reducing the number of years the spouse or surviving spouse must be married to a veteran from five years to one year and by eliminating the requirement that the spouse or surviving spouse be at least 45 years old.

3. Allow a veteran's service-connected compensation to be included in the calculation of the veteran's contribution to the cost of care at the Veterans Home.

The committee learned that if the proposal to reduce the residency requirement for veterans to be admitted to the Veterans Home from one year to 30 days results in an additional 10 residents at the Veterans Home, the general fund appropriation for the Veterans Home could be reduced by \$201,180 as follows:

Item	Biennial Estimate
Veterans Home revenue increase	\$238,120 ¹²
Veterans Home cost increase	\$36,940 ³
Potential reduction in Veterans Home biennium of general fund appropriation	\$201,180

¹ Assumes all 10 residents would be eligible for federal Veterans Administration per diem (\$24.40 per day).
² The revenue increase relates to federal Veterans Administration per diem (\$178,120) and resident rent collections (\$60,000).
³ The cost increases relate to meals (\$31,026) and plant services (\$5,914).

The Veterans Home anticipates the fiscal impact associated with the proposal to change the requirements for admission of spouses or surviving spouses to the Veterans Home to be less than \$5,000 per biennium.

The committee learned that based on Veterans Home estimates, the proposal to allow the Veterans Home to use a veteran's service-connected compensation in the calculation of the veteran's contribution to the cost of care could result in additional collections from \$20,000 to \$25,000 per biennium for each eligible veteran.

Performance Audit

Section 2 of 2001 Senate Bill No. 2007 provided that the State Auditor conduct a performance audit of the Veterans Home during the 2001-03 biennium. The section authorized the State Auditor to use the services of a consultant and to review the contractual arrangements for physician services at the Veterans Home as part of the audit. The State Auditor's office contracted with Pathway Health Services, a consulting firm from Minnesota, to assist in the performance audit at a cost of \$16,800, which was paid by the Veterans Home.

The committee received the performance audit report at its last meeting, which contained the auditor's findings and recommendations in the following areas:

1. Management and administrative structure:
 - a. Enhance the administrative structure and organization.
 - b. Improve the monitoring and oversight of the commandant.
 - c. Change the membership structure of the Administrative Committee on Veterans Affairs.
 - d. Develop a strategic plan.
 - e. Improve the accounting, budgeting, and financial systems.
 - f. Improve the admission process.
 - g. Update the North Dakota Administrative Code.
 - h. Improve personnel management.
2. Financial resources:
 - a. Ensure compliance with state laws relating to the use of the general fund appropriation.
 - b. Generate additional revenue from sources other than the general fund.
 - c. Make improvements to the use of the commandant's custodial fund.
 - d. Improve accountability for the use of appropriated funds.
 - e. Improve project accounting.
 - f. Improve the procurement process.
 - g. Automate the skilled care unit accounting process.
 - h. Reimburse employees for mileage at the statutory level.
 - i. Establish new policies for accounting, budgeting, and other financial areas.
 - j. Close the "petty cash" account.
3. Staffing and level of care:
 - a. Improve levels of care.
 - b. Improve staffing levels.
 - c. Monitor employee satisfaction.
 - d. Monitor resident satisfaction.

Refer to the report of the Legislative Audit and Fiscal Review Committee for detailed information on the Veterans Home performance audit report.

Other Activities and Testimony

The committee learned that the Veterans Home bond payment is approximately \$276,000 per biennium and that nine years remain on the bond issue. The bonds

were initially issued in 1990 for \$1,169,000 for construction of the nursing home wing, new heating and ventilating systems, and road and parking lot improvements.

The committee learned that 1999-2001 expenditures from the veterans' postwar trust fund for veteran-related programs totaled \$519,652 and the estimated June 30, 2003, balance in the veterans' postwar trust fund is \$4.4 million. Money in the veterans' postwar trust fund is spent by the Administrative Committee on Veterans Affairs for veterans' purposes pursuant to a continuing appropriation.

Residents of the Veterans Home testified regarding the Veterans Home study, including comments that:

1. The Veterans Home provides high-quality care to its residents.
2. No changes are needed at the Veterans Home.
3. Any negative findings are not reflective of the high-quality care provided at the Veterans Home.
4. The staff and management of the Veterans Home listen to the concerns and ideas of residents to improve the quality of care and services.

The committee conducted a budget tour of the Veterans Home, including the gazebo, skilled care unit, chapel, multiuse room, conference room, basic care unit, and exercise room areas.

Recommendations

The committee recommends House Bill No. 1027 to change the residency requirement for a veteran to be eligible for admission to the Veterans Home from one year to 30 days.

The committee recommends House Bill No. 1028 to change the requirement for a spouse or surviving spouse of a veteran to be admitted to the Veterans Home. The bill reduces the number of years the spouse or surviving spouse must be married to a veteran from five years to one year and eliminates the requirement that the spouse or surviving spouse be at least 45 years old.

The committee recommends House Bill No. 1029 to allow a veteran's service-connected compensation to be included in the veteran's contribution to the cost of care at the Veterans Home.

The committee recommends House Bill No. 1030 to provide for a Legislative Council study during the 2003-04 interim of the future role of the Veterans Home, including the development of a strategic plan for the operations of the home and the implementation of the recommendations included in the performance audit. The bill includes a \$30,000 general fund appropriation to the Legislative Council for hiring a consultant to assist in the review of the future role of the Veterans Home and the development of a strategic plan for the Veterans Home.

RACING COMMISSION STUDY

Section 14 of House Bill No. 1003 directed the Legislative Council to study the Racing Commission, including

its authority to schedule, promote, support, and regulate live or simulcast racing in North Dakota. The study was also to address the effectiveness of the commission's authority to both promote and regulate racing and whether the authority is appropriate for the commission.

History and Statutory Authority of Racing Commission

The Racing Commission was established and parimutuel horse racing was authorized by the 1987 Legislative Assembly in Senate Bill No. 2319. Initially the Racing Commission was established in the office of the Secretary of State. Original members of the commission were the Secretary of State and four other members appointed by the Governor.

The 1989 Legislative Assembly approved House Bill No. 1184, which moved the Racing Commission from the Secretary of State's office to the Attorney General's office. The Secretary of State was removed as chairman of the commission, and one other member appointed by the Governor was added. This bill also established the breeders' fund and purse fund. The bill provided that one-half of 1 percent of the parimutuel pool and other wagering pools for each day of racing were to be deposited in the breeders' fund, one-half of 1 percent were to be deposited in the purse fund, and depending on the total of the pool, either 3 or 4 percent were to be deposited in the state general fund. The bill also authorized offtrack wagering on races held either in state or out of state.

The 1991 Legislative Assembly approved House Bill No. 1260 that replaced the offtrack wagering statute enacted by the 1989 Legislative Assembly with a similar statute providing for simulcast wagering for in-state or out-of-state races. This bill also created the promotion fund and provided that unclaimed tickets and breakage from each live race or simulcast program be deposited in the promotion fund. The bill also provided that the money in the breeders' fund, purse fund, and promotion fund be spent by the commission pursuant to a continuing appropriation. In addition, the bill reduced the percentage of the pools deposited in the state general fund from 3 or 4 percent to 2 or 3 percent.

The 1991 Legislative Assembly approved Senate Bill No. 2354 providing that of the Governor's five appointees, the chairman and one each must be nominated by the state chapter or affiliate of the American Quarter Horse Racing Association, the United States Trotting Association, the International Arabian Horse Association, and the North Dakota Thoroughbred Association.

The 1993 Legislative Assembly approved Senate Bill No. 2155 authorizing simulcast dog racing in the state.

The 1995 Legislative Assembly approved House Bill No. 1365 providing that for each live race or simulcast wagering pool, excluding win, place, and show pools, one-half of 1 percent of the pool must be deposited in the promotion fund. The percentage deposited in the general fund from these pools was reduced from 3 to 2.5 percent.

The 2001 Legislative Assembly approved Senate Bill No. 2381 authorizing parimutuel wagering to be conducted through account wagering and providing that an account wager may be made on an account only through a licensed simulcast services provider authorized to operate the simulcast parimutuel wagering system under the certificate system.

The 2001 Legislative Assembly also approved House Bill No. 1003, the Attorney General's appropriations bill, which appropriated \$300,000 for the operating expenses of the Racing Commission of which \$150,000 was from the general fund, \$50,000 from the promotion fund, \$50,000 from the purse fund, and \$50,000 from the breeders' fund.

The bill also changed statutory provisions relating to the Racing Commission and parimutuel horse racing included in NDCC Chapter 53-06.2 to provide that:

1. The Racing Commission is under the supervision of the Attorney General.
2. The Attorney General may charge the Racing Commission for services provided to the commission.
3. The Attorney General rather than the Emergency Commission may authorize the Racing Commission to spend up to 25 percent of the promotion fund for operating expenses of the commission.
4. Compensation of Racing Commission members is \$75 per day, which is an increase of \$35 per day from the previous rate of \$40.

Funding

The following schedule provides the legislative appropriations for the Racing Commission since 1993:

Biennium	General Fund	Estimated Income	Total
1993-95	\$222,421		\$222,421
1995-97	\$211,300		\$211,300
1997-99	\$219,744		\$219,744
1999-2001	\$222,067		\$222,067
2001-03	\$150,000	\$150,000	\$300,000

Racing Taxes and Fees

Racing-related taxes and fees include:

1. For each live race or simulcast program wager on win, place, and show parimutuel pools:
 - a. One-half of 1 percent is deposited in the breeders' fund;
 - b. One-half of 1 percent is deposited in the purse fund; and
 - c. 2 percent is deposited in the general fund.
2. For each live race or simulcast program for daily double, quinella, exacta, trifecta, or other wager combining two or more horses for winning payoffs in a pool:
 - a. One-half of 1 percent is deposited in the breeders' fund;
 - b. One-half of 1 percent is deposited in the purse fund;

- c. One-half of 1 percent is deposited in the promotion fund; and
 - d. 2.5 percent is deposited in the general fund.
3. Unclaimed tickets and breakage from each live race or simulcast program are deposited in the promotion fund.

The following schedule details the income, expenditures, and balances of the breeders' fund, purse fund, and promotion fund:

	Breeders' Fund	Purse Fund	Promotion Fund	Total All Funds
1993-95				
Revenues	\$63,093	\$59,534	\$126,412	\$249,039
Expenditures	\$76,196	\$68,811	\$69,603	\$214,610
1995-97				
Revenues	\$58,683	\$56,605	\$183,326	\$298,614
Expenditures	\$110,621	\$48,490	\$116,759	\$275,870
1997-99				
Revenues	\$136,088	\$136,485	\$331,237	\$603,810
Expenditures	\$72,197	\$64,500	\$220,938	\$357,635
1999-2001				
Revenues	\$1,541,530	\$1,541,790	\$2,831,934	\$5,915,254
Expenditures	\$239,446	\$263,640	\$333,104	\$836,190
2001-03 (through June 2002)				
Revenues	\$691,259	\$692,036	\$1,232,633	\$2,615,928
Expenditures	\$272,446	\$196,637	\$432,591	\$901,674
June 30, 2002, fund balance	\$1,802,601	\$1,869,611	\$3,576,235	\$7,248,447

The following schedule presents general fund revenues generated from racing activities since 1993:

Biennium	General Fund Revenues
1993-95	\$331,373
1995-97	\$235,521
1997-99	\$614,566
1999-2001	\$6,418,549
Fiscal year 2002	\$3,680,481

Regulatory and Promotion Functions

Racing Commission regulatory functions include:

1. Promulgating rules and assuring compliance with applicable laws relating to live and simulcast horse racing.
2. Responding to horsemen's concerns and other inquiries directed toward live and simulcast racing.
3. Approving and licensing live racing.
4. Approving and licensing simulcast racing.
5. Monitoring live and simulcast racing by providing veterinarians, stewards, and other personnel required to assure compliance with applicable rules and regulations.

Racing Commission promotion functions include:

1. Administering the promotion fund to promote live and simulcast racing and oversee compliance with promotion awards.
2. Administering the purse fund and dispersing amounts to live racetracks to promote live racing and assure compliance by the award recipients.
3. Administering the breeders' fund by controlling registration and dispersing awards.

The committee learned that the Attorney General's office provides legal advice to the Racing Commission

and assists the commission with its accounting responsibilities. The committee learned that the Attorney General believes it may be appropriate for the commission to be involved in both regulating and promoting racing in the state; however, as betting and racing expands, these responsibilities may need to be segregated.

The Racing Commission suggested that it be allowed to retain its license fee collections for use in performing its regulatory functions, such as hiring veterinarians and stewards, performing drug testing, and paying for other racing-related expenses. These collections, which are currently being deposited in the general fund, include simulcast license fees, live track license fees, breeders' application fees, and fines. The commission collected \$15,568 from these collections in calendar year 2000 and estimates collecting from \$30,000 to \$40,000 in the 2003-05 biennium.

The committee learned that the costs for a three-day weekend race include approximately \$2,500 for a race steward, \$2,500 for a veterinarian, and \$3,000 for related drug testing.

Racing Activities

Live horse races are in Belcourt and Bottineau and over 1,800 horses are registered by North Dakota breeders. Simulcast racing is the wagering on races held at licensed racetracks at another location.

The following schedule details the total amounts bet (handled) each year in the North Dakota simulcast system:

1990	\$28,000
1991	\$4,500,000
1992	\$5,631,088
1993	\$6,892,599
1994	\$6,961,396
1995	\$4,336,330
1996	\$5,168,000
1997	\$5,970,640
1998	\$8,963,637
1999	\$88,563,478
2000	\$151,883,021
2001	\$168,883,021

Of the total amounts bet in the simulcast system, approximately 80 percent is returned to the bettors, 5 percent is provided to the track, 5 percent is provided to the simulcast site, 5 percent is provided to the signal carrier, and 5 percent is provided to the state.

The committee learned that the substantial increase in simulcast betting reflected in those numbers began during the 1999-2001 biennium in the Fargo area.

North Dakota Horse Park in Fargo

The committee learned that the Racing Commission in November 2000 committed funding to assist in the construction of a new live racetrack in North Dakota. Fargo and Mandan submitted proposals for a track, and the commission, in December 2000, chose the Fargo proposal. The Racing Commission allocated \$2.5 million for the Fargo racetrack, including \$1.5 million for the

construction of a racetrack, \$100,000 per year for five years for operating costs, and \$100,000 per year for five years for enhancing the purses at the track.

The committee toured the North Dakota horse park, which is under construction and is located one and one-half miles west of I-29 on 19th Avenue in Fargo. The North Dakota Horse Park Foundation will own and operate the racetrack. The racetrack consists of 113 acres, 99 acres of which are operated by the North Dakota Horse Park Foundation and 14 acres of which are operated by the North Dakota State University Development Foundation. The committee learned that the land for the horse park was donated to the City of Fargo, and the city has leased the land to the North Dakota Horse Park Foundation for \$1 per year for 99 years. The North Dakota Horse Park will be developed in three phases. Phase I includes construction of the racetrack, which will be six furlongs (three-fourths mile) in length; parking for 400 cars; parking for horsemen; underground utilities; bleachers for 900 people; a tent for parimutuel betting; and a portable restroom trailer. Barn space will be available for 200 horses as part of the North Dakota State University facility, which will also house the university Equine Sciences Department. Phases II and III will include construction of a grandstand, permanent restroom facilities, two more barns, and additional parking. The first racing events are tentatively planned for four weekends in August and September 2003.

The committee reviewed the funding that has been designated for the horse park as follows:

North Dakota Racing Commission grant	\$2,500,000
City of Fargo tax increment financing district	1,000,000
Gift of land	597,500
Cass County economic development - Loan for land purchase	250,000
Fargo-Moorhead Convention and Visitors Bureau	100,000
Total	\$4,447,500

Other Testimony

Representatives of the North Dakota Horsemen's Association expressed concerns regarding the 2001 Legislative Assembly's appropriations of funds from the promotion fund, the breeders' fund, and the purse fund for the operating costs of the Racing Commission.

Recommendations

The committee recommends Senate Bill No. 2028 to provide that any money collected by the Racing Commission from license fees and fines be deposited in the Racing Commission operating fund rather than the general fund and, subject to legislative appropriations, may be spent for operating costs of the commission. The committee learned that the estimated fiscal impact of the bill for the 2003-05 biennium is an additional

\$30,000 to \$40,000 being deposited in the Racing Commission special funds with a related reduction of \$30,000 to \$40,000 in general fund revenue.

HIGHWAY FUNDING STUDY

Section 5 of Senate Bill No. 2159 directed the Legislative Council to study highway construction and maintenance funding, including revenue sources and distribution formulas for the state, cities, and counties.

North Dakota Highway System

The North Dakota highway system is comprised of 86,616 miles--7,378 miles on the state highway system, 18,949 miles on the county highway system, 3,823 on the urban system, and 56,466 miles of other roads.

State Highway Funding Sources

Article X, Section 11, of the Constitution of North Dakota provides:

Section 11. 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.

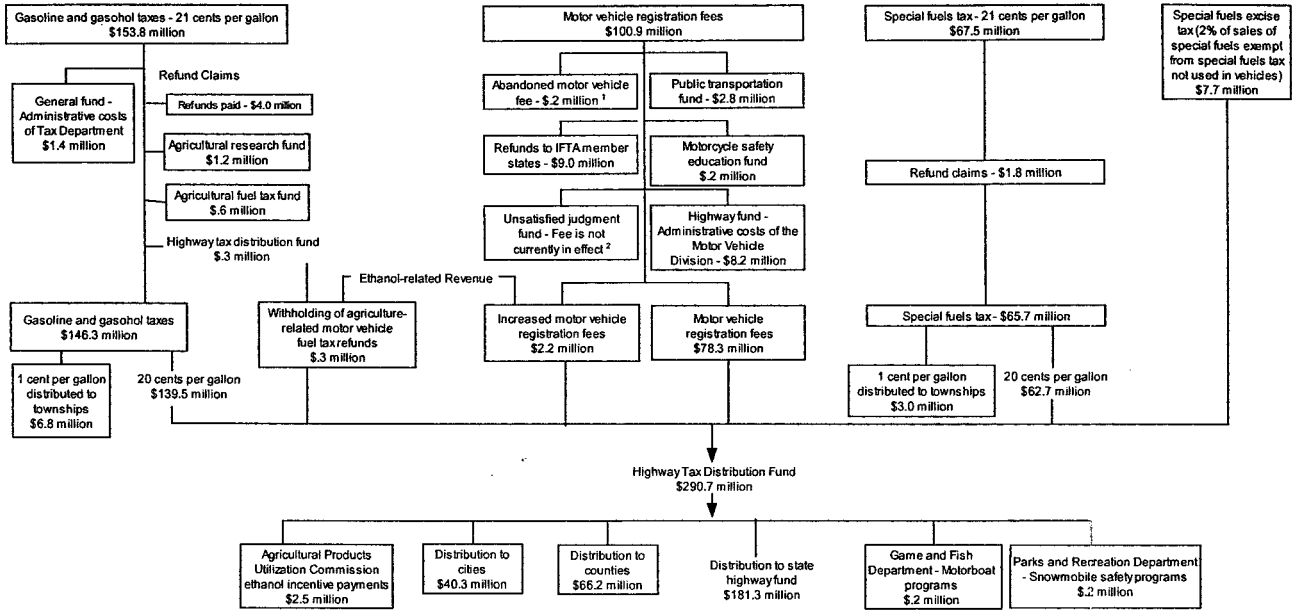
Revenue sources as dedicated in the state constitution (motor vehicle fuel taxes and motor vehicle registration fees) provide the majority of funds used for state highway purposes. These funds are deposited in the state highway tax distribution fund and distributed in the following proportions to the state, counties, and cities:

State	63%
Counties	23%
Cities	14%
Total	100%

In addition, other revenues are deposited directly in the state highway fund and are not considered "dedicated" for highway purposes, which means those funds are not required by the state constitution to be used for highway construction. Those revenues are estimated to total \$34.4 million for the 2001-03 biennium and include truck regulatory fees, driver's license fees, interest earned on the highway fund, and other miscellaneous revenues.

The following charts illustrate the sources, transfers, and uses of state highway funding for the 2001-03 biennium:

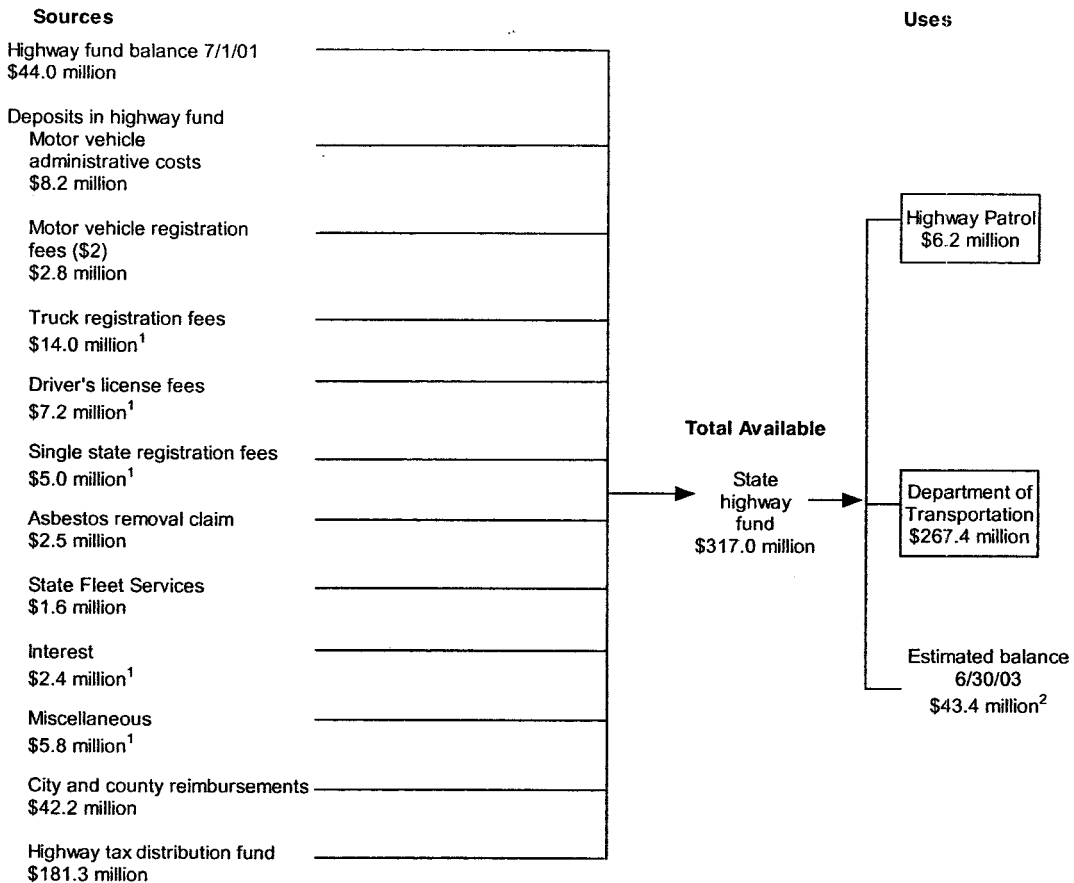
**HIGHWAY TAX DISTRIBUTION FUND
Sources and Uses of Funds
2001-03 Biennium**



¹ The abandoned motor vehicle fee of \$2 on each initial North Dakota vehicle title is imposed only if the balance in the abandoned motor vehicle fund is \$100,000 or less. The fee is suspended when the fund balance is \$250,000 or more.

² An additional \$1 fee is imposed on motor vehicle registrations for a period of one year if the balance in the unsatisfied judgment fund is less than \$300,000. The fee is suspended for the following year if the balance in the fund is \$300,000 or more on July 1.

**STATE HIGHWAY FUND
Sources and Uses of Funds
2001-03 Biennium**



¹ "Nondedicated" highway revenues total \$34.4 million.

² Although the June 30, 2003, balance is estimated to be \$43.4 million, highway project commitments for the 2003 construction season will be paid from this amount.

Federal Highway Construction Funds

Congress passed the Transportation Equity Act for the 21st century in 1998. Under this program federal funds for highway construction are provided to North Dakota in the following major categories:

1. Interstate - For interstate highway projects.
2. National highway system - For highways in the state designated as major roads or principal arterials. Approximately 2,700 miles of North Dakota highways have this designation,

including the interstates and all or portions of Highways 2, 5, 12, 13, 23, 52, 57, 81, 83, 85, 200, and 281.

3. Surface transportation program - For the remainder of the state highway system and for city and county roads.

The Transportation Equity Act for the 21st century is effective through federal fiscal year 2003. The following schedule presents federal funding available to North Dakota for highway construction projects and required matching funds:

HIGHWAY CONSTRUCTION FUNDS (Amounts Shown in Millions)												
Federal Fiscal Year	State Projects		County Projects		City Projects			Total				
	Federal Share	State Share	Federal Funds	County Share	Federal Share	City Share	State Share	Federal Share	State Share	County Share	City Share	Total
1997	\$70.2	\$13.2	\$11.1	\$2.8	\$19.8	\$3.7	\$1.2	\$101.1	\$14.4	\$2.8	\$3.7	\$122.0
1998	\$93.3	\$17.5	\$17.4	\$4.4	\$19.6	\$3.7	\$1.2	\$130.3	\$18.7	\$4.4	\$3.7	\$157.1
1999	\$103.7	\$19.5	\$22.1	\$5.5	\$24.4	\$4.6	\$1.5	\$150.2	\$21.0	\$5.5	\$4.6	\$181.3
2000	\$112.6	\$21.1	\$19.3	\$4.8	\$28.8	\$5.4	\$1.8	\$160.7	\$22.9	\$4.8	\$5.4	\$193.8
2001	\$124.3	\$23.3	\$17.1	\$4.3	\$27.8	\$5.2	\$1.7	\$169.2	\$25.0	\$4.3	\$5.2	\$203.7
2002	\$141.1	\$26.5	\$19.8	\$4.9	\$20.3	\$3.8	\$1.3	\$181.2	\$27.8	\$4.9	\$3.8	\$217.7
2003 estimate	\$122.6	\$23.0	\$11.8	\$2.9	\$40.6	\$4.5	\$5.4	\$175.0	\$28.4	\$2.9	\$4.5	\$210.8
2004 estimate	\$129.4	\$24.3	\$20.4	\$5.1	\$37.2	\$5.9	\$3.5	\$187.0	\$27.8	\$5.1	\$5.9	\$225.8

Motor Vehicle Fuel Taxes and Registration Fees

The following schedule provides North Dakota motor

vehicle fuel tax rates and collections and motor vehicle registration fee collections since 1992:

Fiscal Year	Motor Vehicle Fuel Tax Rate (Per Gallon) ¹	Motor Vehicle Fuel Tax Collections ²	Motor Vehicle Registration Fee Collections ³
1992	17¢	\$70,498,438	\$30,086,585
1993	17¢	\$72,490,271	\$32,466,529
1994	18¢	\$77,189,636	\$30,227,902
1995	18¢	\$80,762,335	\$32,440,251
1996	20¢	\$88,966,659	\$31,975,720
1997	20¢	\$97,846,402	\$32,420,082
1998	20¢	\$98,131,468	\$32,287,883
1999	21¢	\$96,651,826	\$32,833,217
2000	21¢	\$103,765,429	\$35,596,790
2001	21¢	\$103,897,220	\$37,954,851
2002	21¢	\$102,298,816	\$36,553,200

¹ The 1993 Legislative Assembly increased the motor vehicle fuel tax from 17 cents to 18 cents per gallon for the period December 1, 1993, through December 31, 1995. The 1995 Legislative Assembly increased the rate to 20 cents for the period January 1, 1996, through December 31, 1997. In 1997 the Legislative Assembly provided for a 20-cent rate through December 31, 1999. The 1999 Legislative Assembly established the current rate of 21 cents, effective July 1, 1999.

² Motor vehicle fuel tax collections include revenues from gasoline taxes, special fuels (diesel) taxes, the special fuels 2 percent excise tax, and gasohol taxes.

³ Motor vehicle registration fees remained the same from 1991 through 1999. The 1999 Legislative Assembly increased the motor vehicle registration fees by \$1 per year on motor vehicles, except for pickups 20 years or older and farm trucks which were not increased.

The committee learned that a one-cent increase from the current 21 cents per gallon tax on motor fuels and special fuels is estimated to generate \$10 million per biennium, \$6.3 million (63 percent) of which would be deposited in the highway fund and \$3.7 million (37 percent) would be distributed to counties and cities.

Other States Highway Financing Systems

The committee reviewed other states' methods of financing highway projects. The committee learned that the majority of states' highway revenues are generated from fuels taxes and motor vehicle registration fees.

Fuels Taxes

North Dakota's fuels tax rate of 21 cents per gallon on gasoline and diesel fuels is slightly above the national average of 19.7 cents per gallon for gasoline and 19.8 cents per gallon for diesel fuel. The following schedule compares North Dakota's rate to other states in our region:

	Tax Rate Per Gallon	
	Gasoline	Diesel
Minnesota	\$.20	\$.20
Montana	\$.27	\$.27
Nebraska	\$.245	\$.245
North Dakota	\$.21	\$.21
South Dakota	\$.22	\$.22
Wyoming	\$.14	\$.14

Motor Vehicle Registration Fees

The following schedule compares annual motor vehicle registration fees for selected states:

	Motor Vehicle Registration Fees ¹			
	Passenger Vehicle	Pickup	Farm Truck	Truck Tractor
Minnesota	\$198	\$198	\$322	\$1,760
Montana	\$292	\$347	\$691	\$1,664
Nebraska	\$308	\$338	\$814	\$2,024
North Dakota	\$72	\$60	\$209	\$1,038
South Dakota	\$42	\$55	\$133	\$1,457
Wyoming	\$292	\$290	\$786	\$2,000
Regional average	\$201	\$215	\$493	\$1,657

¹ Motor vehicle registration fees are calculated on a 1999 model year vehicle being registered for the second year in calendar year 2000. Vehicle values and weights are for typical vehicles in each category.

Other Revenue Sources

States generate additional funding for highways from a variety of other sources. The following schedule summarizes select revenue sources that are used for highway purposes in other states in addition to fuels taxes and registration fees:

Revenue Type	State(s)
Sales tax - General	Arizona, Illinois, Kansas, Nevada, Utah, Virginia
Motor vehicle excise tax	Iowa, Kansas, Michigan, Missouri, Nebraska, North Carolina, South Dakota
Motor fuels sales tax	California, Georgia, Michigan
Auto parts sales tax	Michigan
Gaming tax	Colorado
Rental car tax	Florida, Hawaii, Iowa, South Dakota, Utah
Severance tax	Arkansas, Kentucky, New Mexico, Oklahoma, Tennessee, Wyoming
Corporate income tax	Maryland
Lubricating oil tax	Alabama, Mississippi, Texas
Contractor tax	Mississippi

The committee reviewed information prepared by the Florida Department of Transportation regarding alternative transportation revenue sources. Alternative revenue sources identified include:

1. Vehicle miles of travel (VMT) fees - An annual assessment based on the number of miles traveled in the preceding year.
2. Weight distance fees - An annual assessment based on factors, including miles driven and vehicle weight.
3. New vehicle or auto parts sales tax - Taxes on new or used vehicle purchases or on sale of automobile parts.
4. Emissions fees - An annual fee based on a vehicle's emissions characteristics and on the annual number of miles traveled.

5. Highway right of way lease income - Collections from leases of highway right of way for fiber optic cables, cell phone towers, or other purposes.
6. Road-branding fee - A fee charged for naming a segment of a highway for an individual or business.

Debt Financing

Congress approved the National Highway System Designation Act of 1995, which provides federal reimbursement for debt financing costs relating to federal aid highway projects. Several states are utilizing this authority by issuing bonds to finance federal aid highway projects. These types of bonds are called GARVEE (grant anticipation revenue vehicles) bonds. Prior to passage of this Act, federal highway funds could not be used to pay interest costs. Payments of principal and interest on the bonds are paid at the same matching percentage as the highway project matching percentage that was financed by the bonds (80 percent federal, 20 percent state for most state highways).

North Dakota Highway System Needs

Based on the Department of Transportation's review of a number of plans and needs studies assessing the current and future needs of North Dakota's transportation system, the committee learned that the North Dakota highway system needs an estimated \$528 million per year to adequately maintain the state highway, large city, and county road systems in their current condition and at their current level of services. A total of \$710 million per year is needed to improve the roadways in the state, large city, and county road systems. North Dakota's current investment in these three systems is \$320 million per year. Therefore, based on the department's report, an additional \$208 million per year is needed to maintain the current system or an additional \$390 million per year is needed to enhance the system.

The committee learned that based on an urban street and county road funding needs assessment completed in 2000, \$72 million of county investment is being made in roads under county jurisdiction and an additional \$23 million of funding is needed to adequately maintain the rural road system in the state.

At the committee's request, the Department of Transportation identified the following potential options for providing additional transportation revenue:

1. Increasing the motor fuel tax on gasoline, gasohol, and diesel fuel (a one cent per gallon increase would generate \$5 million per year, or \$10 million per biennium).
2. Increasing motor vehicle registration fees (a \$1 increase would generate \$700,000 per year, or \$1.4 million per biennium).
3. Increasing the 2 percent special fuels tax (a 1 percent increase, from 2 percent to 3 percent, would generate \$2.3 million per year, or \$4.6 million per biennium).

4. Increasing the excise tax on the sale of new and used motor vehicles (a 1 percent increase would generate \$10.75 million per year, or \$21.5 million per biennium).
5. Dedicating a portion of the general sales tax to transportation (a 0.25 percent sales tax increase would generate \$20.5 million per year, or \$41 million per biennium).
6. Increasing the tax on rental cars (a tax of \$1 per day on rental cars would generate \$360,000 per year, or \$720,000 per biennium, while a 1 percent rental car tax would generate \$180,000 per year, or \$360,000 per biennium).
7. Dedicating a portion of severance tax revenues on natural resources to transportation.
8. Imposing a sales tax on motor fuels (a 1 percent sales tax would generate \$6.4 million per year, or \$12.8 million per biennium at \$1.20 per gallon).
9. Increasing the sales tax on auto parts (a 1 percent increase would generate \$1.5 million per year, or \$3 million per biennium).
10. Shifting the funding for the ethanol incentive program to another source (this change would generate \$1.25 million per year, or \$2.5 million per biennium).
11. Providing funding for the Highway Patrol from sources other than the highway fund.
12. Enacting a personal property tax on vehicles.
13. Dedicating gambling funds to transportation.
14. Establishing toll bridges and toll roads.
15. Developing private/public partnerships.
16. Enacting a vehicle miles of travel tax.
17. Enacting a weight distance tax.
18. Bonding for highway projects; however, a revenue source would be needed to repay the bonds.
19. Appropriating money from the general fund.
20. Enacting taxes on other petroleum products.
21. Utilizing corporate income tax collections.
22. Developing rest area concessions.
23. Utilizing traffic fine collections.
24. Increasing taxes on beer and cigarettes.
25. Enacting a contractor tax.
26. Utilizing collections from mineral leases on state-owned land.
27. Utilizing room tax collections.
28. Charging for use of highway right of way.
29. Utilizing collections from an annual insurance underwriters' fee.
30. Taxing alternative fuel sources.

The committee heard testimony from representatives of the North Dakota Association of Counties and the North Dakota League of Cities indicating that when considering potential highway tax distribution fund revenue enhancements, more traditional tax sources such as vehicle fees and fuel taxes may be more acceptable to the public than generating additional revenue from new sources.

The committee heard testimony indicating that collocating county shops and state section buildings could improve the efficiency of both state and county operations. The committee considered options to allow the Department of Transportation and political subdivisions to do collaborative highway projects with funding generated from a dedicated revenue source. The first option considered by the committee would have allowed the department and political subdivisions to collaborate on highway projects using a dedicated source of revenue and to establish a special fund for depositing and spending the funds for these collaborative projects. The second option would have allowed the department to expand the use of the state infrastructure bank to provide funding for collaborative highway projects involving the state and political subdivisions and to provide that the funds generated from a dedicated revenue source be deposited in the infrastructure bank. The committee learned that the state infrastructure bank was established by the 1997 Legislative Assembly and has been used by the state for providing loans for completing state highway projects eligible for federal participation. The funds borrowed are repaid from subsequent federal allocations and state highway fund money.

Statewide Strategic Transportation Plan

The committee received reports on the statewide strategic transportation plan being developed by the Department of Transportation. Involved in the development of the plan were representatives of the Department of Transportation, counties, cities, economic development organizations, and other state and private entities. The department held numerous transportation forums across the state to receive input from the public on the development of the plan. The vision, mission, and goals for the statewide strategic transportation plan include:

- Vision - North Dakota's transportation system is an important part of regional, national, and global systems developed strategically to help grow and diversify the economy and enhance North Dakota's quality of place.
- Mission - A transportation system that offers personal choices, enhances business opportunities, and promotes the wise use of all resources.
- Goals

Safety - Safe and secure transportation for residents, visitors, and freight.

Personal mobility - The transportation system allows optimum personal mobility.

Freight mobility - The transportation system allows the efficient and effective movement of freight.

Economic competitiveness - The transportation system enhances economic diversity, growth, and competitiveness.

Revenue and finance - Funding sufficient to protect North Dakota transportation

investment and to address future transportation needs.

Preliminary initiatives have been developed relating to the statewide strategic transportation plan to improve the level of service to the public, including:

1. Strategically prioritizing the use of transportation resources.
2. Defining the levels of transportation services the state will strive to provide and maintain.
3. Enhancing communication and facilitating cooperation between and within governmental units, tribal authorities, modes of transportation, and the public and private sectors.
4. Improving the performance of priority transportation corridors and facilities.
5. Incorporating economic competitiveness as an integral component of transportation investment strategies.
6. Analyzing the economic impacts of load limits and benefits of establishing a statewide program to coordinate the administration of load limits.

The final report of the statewide strategic transportation plan will be available for the 2003 Legislative Assembly.

Emergency Relief Projects

During the 2001 highway construction season the Department of Transportation spent \$33 million for emergency relief projects requiring an \$8.25 million state match. The department anticipates spending \$16.6 million during the 2002 highway construction season for emergency relief projects requiring a \$4.15 million match. The department has established a line of credit with the Bank of North Dakota, pursuant to Senate Bill No. 2112 as approved by the 2001 Legislative Assembly (NDCC Section 24-02-44) and anticipates borrowing \$12.4 million during this biennium. Pursuant to Section 24-02-44, the department plans to request from the 2003 Legislative Assembly a deficiency appropriation from the highway fund for repayment of the borrowed funds. Based on current interest rates, the department will be charged an interest rate of 2.56 percent by the Bank of North Dakota on any borrowed funds.

Other Information

The committee received other testimony from representatives of the Department of Transportation, counties, cities and other interested persons. Major comments include:

1. In 1994 the cost of interstate concrete recycling two lanes in one direction was \$837,000 per mile and in 2000 the cost was \$1.3 million per mile, a 55 percent increase.
2. The Department of Transportation priorities are to first maintain the state highway system and, second, to match all federal aid available to the state.
3. The sources of funding for county roads include highway tax distribution fund - 43 percent,

property tax levies - 27 percent, federal aid - 23 percent, and other local sources - 7 percent.

4. A number of counties are levying the maximum number of mills allowed for road systems and the funding generated is not adequate.
5. Counties delay highway projects for a number of years in order to generate the amount of funding needed to complete a project.
6. Cities generally have funding available for street maintenance but not for major improvements.
7. The highway tax distribution fund formula should not be changed, but additional revenue sources for the state highway tax distribution fund should be developed to provide additional highway revenue for the state, counties, and cities.
8. A number of county roads have been reduced from an asphalt to gravel surface due to the lack of county funding to maintain roads.
9. North Dakota contains approximately 56,000 miles of township roads, and townships are allocated approximately \$96 per mile per year for road maintenance.
10. To generate additional highway revenue, select sales tax exemptions could be eliminated and the proceeds could be allocated to the highway tax distribution fund.
11. To operate more efficiently, the state, counties, and cities could coordinate highway projects that are in close proximity to each other.
12. Based on a report prepared by the state Tax Department in 2000, the estimated fiscal impact of removing sales tax exemptions ranges from \$388.7 million to \$506.9 million of additional tax revenue per biennium.
13. The state needs to continue planning and developing the Highway 2 four-lane project from Minot to Williston.
14. State assistance is needed to improve a 12-mile section of Highway 30 north of Highway 2 that is not on the state highway system but is important to school transportation and tourism in the area. The estimated cost of paving this roadway is \$150,000 to \$180,000 per mile.

Recommendations

The committee recommends House Bill No. 1031 to authorize the director of the Department of Transportation to enter agreements with counties or cities for the cooperative or joint administration of an activity that will enhance the efficiency and effectiveness of the state highway system.

BUDGET TOURS

During the interim the Budget Committee on Government Administration functioned as a budget tour group of the Budget Section and visited the Veterans Home, Southeast Human Service Center, Division of Independent Study, and the Agronomy Seed Farm. The committee heard about facility programs, institutional needs for major improvements, and problems institutions

or other facilities may be encountering during this 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 2003 Legislative Session.

Recommendation

The committee recommends Senate Concurrent Resolution No. 4001 to provide for a Legislative Council study of the feasibility and desirability of allowing human service centers additional funding flexibility.

BUDGET COMMITTEE ON GOVERNMENT SERVICES

The Budget Committee on Government Services was assigned responsibilities in six areas. Section 6 of Senate Bill No. 2380 provided that the Legislative Council study programs dealing with risk-associated behavior. Section 2 of Senate Bill No. 2380 directs the State Health Officer to provide reports to the Legislative Council regarding the implementation of the community health grant program.

North Dakota Century Code (NDCC) Section 54-06-31 directed the Legislative Council to receive periodic reports from the Central Personnel Division on the implementation, progress, and bonuses provided to classified state employees under state agency recruitment and retention bonus pilot programs. Section 6-12-05 provides that the Legislative Council is to receive financial statements and a report from the governing board overseeing any housing development fund established in the state. 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. These responsibilities were assigned to the committee. Based on Legislative Council directive, the committee was also assigned the responsibility of monitoring the status of state agency appropriations.

Committee members were Representatives Jeff Delzer (Chairman), Ron Carlisle, Rachael Disrud, Mark A. Dosch, James Kerzman, Frank Klein, Matthew M. Klein, Myron Koppang, Clara Sue Price, Dave Weiler, and Robin Weisz and Senators Duaine C. Espgaard, Ralph L. Kilzer, Gary A. Lee, Judy Lee, Elroy N. Lindaas, and Harvey Tallackson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2002. The Council accepted the report for submission to the 58th Legislative Assembly.

RISK-ASSOCIATED BEHAVIOR PROGRAMS

Pursuant to Section 6 of Senate Bill No. 2380, the committee studied programs dealing with the prevention and treatment of alcohol, tobacco, and drug abuse and other kinds of risk-associated behavior. Various state agencies, including the Department of Corrections and Rehabilitation, the Attorney General, the State Department of Health, the Department of Human Services, the Department of Public Instruction, the Department of Transportation, the National Guard, the Children's Services Coordinating Committee, and the Supreme Court, were reviewed to determine whether better coordination among the programs within those agencies may lead to a more effective and cost-efficient way of operating programs and providing services. The committee received a Legislative Council staff survey of state agencies' alcohol, drug, tobacco, and risk-associated behavior programs. Agencies surveyed provided the following information:

- Description of the program.
- Funding sources and restrictions.
- Anticipated uses of funds.
- Length of time funding may be available.

Total funding for the 2001-03 biennium for various alcohol, drug, tobacco, and other risk-associated programs is:

Agency	General Fund	Federal and Special Funds	Total Funds
State Department of Health	\$0	\$7,429,934	\$7,429,934
Attorney General's office	1,276,176	6,210,001	7,486,177
Department of Corrections and Rehabilitation	4,870,593	5,045,242	9,915,835
Department of Human Services	9,105,623	14,762,035	23,867,658
Department of Transportation	0	984,000	984,000
Department of Public Instruction	0	3,428,692	3,428,692
Supreme Court	22,222	289,895	312,117
National Guard	0	1,764,000	1,764,000
Children's Services Coordinating Committee	0	250,000	250,000
Total all agencies	\$15,274,614	\$40,163,799	\$55,438,413
Less duplicated agency pass-through funds	0	(2,436,822)	(2,436,822)
Net total all agencies	\$15,274,614	\$37,726,977	\$53,001,591

The committee received additional testimony from the Children's Services Coordinating Committee on grants to the eight regional and four tribal affiliates for risk-associated behavior programs. The committee learned the total grants awarded to regional and tribal affiliates for the first year of the 2001-03 biennium was \$627,680.

Tobacco Settlement Trust Fund Collections

The committee received status reports from the Legislative Council staff on tobacco settlement trust fund collections for the 2001-03 biennium. The committee learned as of October 2002, \$79.7 million has been received by the state and deposited in the tobacco settlement trust fund. During the first 15 months of the 2001-03 biennium, \$26.8 million of tobacco settlement collections had been received by the state. Tobacco settlement trust fund collections are allocated among the community health trust fund, the common schools trust fund, and the water development trust fund pursuant to NDCC Section 54-27-25 as follows:

Fund	1999-2001 Actual Transfers	2001-03 Transfers as of October 1, 2002	2001-03 Projected Remaining Transfers
Community health trust fund (10%)	\$5,290,078	\$2,678,072	\$2,653,645
Common schools trust fund (45%)	23,805,353	12,051,320	11,941,399
Water development trust fund (45%)	23,805,353	12,051,320	11,941,399
Total transfers from the tobacco settlement trust fund	\$52,900,784	\$26,780,712	\$26,536,443

The committee learned many states, because of budget problems, have sold the right to future tobacco

settlement collections at a discounted value of approximately 50 percent.

Community Health Grant Program

Pursuant to Section 2 of Senate Bill No. 2380, the committee received reports from representatives of the State Department of Health regarding the implementation of the community health grant program. The committee learned the State Department of Health established a Community Health Grant Program Advisory Committee and a community health grant program with the primary purpose of preventing or reducing tobacco usage in the state. The program must, to the extent funding is available, follow the Centers for Disease Control and Prevention guidelines for tobacco prevention. A total of \$4.7 million was appropriated from the community health trust fund for the community health grant program for the 2001-03 biennium. The funds for the program must be allocated pursuant to Senate Bill No. 2380, as follows:

1. **Student tobacco programs** - 40 percent (\$1,880,000) for grants to the public health units for programs to reduce student tobacco use.
2. **County tobacco programs** - 40 percent (\$1,880,000) for grants to public health units for programs to reduce tobacco use by residents living in the counties served by the public health units. A program may address other chronic diseases.
3. **State aid** - 20 percent (\$940,000) for grants to public health units to supplement existing state aid from other sources.

The committee learned all 28 local public health units applied for and were awarded community health grant program funds. Grants awarded totaled \$4,689,279--\$1,878,718 for student tobacco programs, \$1,870,561 for community tobacco programs, and \$940,000 for state aid payments. The \$10,721 of unallocated funds is a result of one local public health unit not applying for its full allocation. The unallocated funds will be made available to other local public health units.

In addition Senate Bill No. 2380 provided \$350,000 from the community health trust fund; \$100,000 for funding the Community Health Grant Program Advisory Committee and \$250,000 for funding grants to cities and counties on a dollar-for-dollar matching basis for city and county employee tobacco education and cessation programs. The advisory committee has spent \$3,246 as of October 2002, and the remaining funds will be used to develop an information data base for the community health grant program and to provide technical assistance to local public health units in implementing programs. Five city-county employee education and cessation programs have been approved as of October 2002 with total funding of \$59,212.

The committee learned the role of the Community Health Grant Advisory Committee is to advise the State Department of Health on program implementation. The advisory committee includes the State Health Officer who serves as the chairman; the state tobacco control administrator; one high school student; one student of a

postsecondary institution in the state; one representative of a nongovernmental tobacco control organization; and one law enforcement officer. In addition the committee includes various representatives of state government and the private sector who are appointed by the State Health Officer.

The committee received testimony from a representative of the Community Health Grant Program Advisory Committee regarding the implementation of the community health grant program who stressed that an actual measurable reduction in the incidence and prevalence of tobacco use or in the expenditures for tobacco-related illnesses and diseases will not be realized in the short term.

The committee received testimony from representatives of Minot area local public health units on activities in the First District Health Unit as a result of the funding received from the community health grant program. The committee also received information from a representative of the American Heart Association regarding other states' activities that includes increasing cigarette taxes. The committee learned cigarettes can be purchased on reservations without being subject to taxation and cost as much as 44 cents less per pack. Based on a behavioral risk factor survey conducted in North Dakota in 1999 and 2000, smoking rates among American Indians over age 18 is 45.4 percent, which is twice the rate for the rest of the age group.

Centers for Disease Control and Prevention Funding

The committee learned the Centers for Disease Control and Prevention will maintain North Dakota's matching requirement at a \$1 state to \$10 federal "hard" or "soft" match through May 31, 2003. A "hard" match requires the expenditure of funds while "soft" match allows indirect costs and donated time. A representative of the State Department of Health informed the committee the Centers for Disease Control and Prevention is likely to increase the matching requirement to a dollar-for-dollar "hard" match requirement after that period. The Centers for Disease Control and Prevention allows a 1-to-10 match for states that do not have existing tobacco control and prevention funding because the Centers for Disease Control and Prevention believes those states would not be able to provide program funding on a dollar-for-dollar matching basis. During the 2001-03 biennium the State Department of Health used approximately \$367,000 of the \$2.3 million Centers for Disease Control and Prevention grant for the cost of five full-time equivalent (FTE) positions relating to tobacco prevention and control.

Dental Loan Repayment Program

Senate Bill No. 2276 provides \$180,000 from the community health trust fund to the State Health Council for a dentists' loan repayment program. The State Health Council is to annually select up to three dentists who agree to provide dental services to communities in the state. The dentists are eligible to receive funds for

the repayment of educational loans. The funds are payable over a four-year period and may not exceed \$80,000 per applicant. The Legislative Assembly included intent in Senate Bill No. 2276 that the 2003 Legislative Assembly provide sufficient funds for the continuation of the program. The selection of the dentists is to be based on the size of the community that will be served:

- One dentist serving a community with fewer than 2,500 residents.
- One dentist serving a community with fewer than 10,000 residents.
- One dentist serving a community with 10,000 or more residents.

The committee learned three dentists have been selected for the dental loan repayment program as of October 2002, serving the following communities:

- Minot (over 10,000 residents) - First year of biennium.
- Larimore (less than 2,500 residents) - First year of biennium.
- Minot (over 10,000 residents) - Second year of biennium.

Conclusion

The committee learned the State Department of Health intends to submit legislation to make changes to NDCC Chapter 23-38, as created by Senate Bill No. 2380, and the community health grant program that could include:

- Clarification of the "minimum base" funding language in NDCC Section 23-38-01(1)(b), regarding whether all counties with a population of fewer than 10,000 are to receive a \$5,000 grant, regardless of whether the county meets the other requirements regarding submission of a qualifying plan.
- Expansion of tobacco cessation and education program opportunities to individuals who are not city and county employees or reduction of the required one-to-one match for the programs.
- Increased funding support for the department to administer the community health grant program and provide technical assistance at the local level.
- Increased funding of approximately \$800,000 from the community health trust fund for a statewide quit smoking line.

The State Department of Health plans to provide a community health grant program expense report, including the amount spent for face-to-face counseling, when the data is available. The committee does not make any recommendations regarding the community health grant program.

RECRUITMENT AND RETENTION BONUS PILOT PROGRAM

North Dakota Century Code Section 54-06-31 created by Section 1 of House Bill No. 1120 directed the Central Personnel Division to report periodically to a legislative committee designated by the Legislative

Council on the implementation, progress, and bonuses provided under state agency recruitment and retention bonus pilot programs. The Budget Committee on Government Services was assigned this responsibility for the 2001-02 interim. The bonus pilot programs may be established to recruit or retain classified state employees in hard-to-fill occupations. The pilot program is effective from March 15, 2001, through June 30, 2003. In order to participate in this pilot program an agency must:

- Have a written policy in place identifying the eligible positions or occupations that may receive the bonuses and provisions in place for providing the bonuses;
- File the written policy with and report each bonus provided to an employee under the program to the Central Personnel Division; and
- Fund bonus pilot programs with the agency's existing salaries and wages budget.

The bonuses provided under this pilot program are not considered a fiscal irregularity under NDCC Section 54-14-03.1.

Testimony

The committee received information from a representative of the Central Personnel Division regarding the model policy, which includes a description of NDCC Section 54-06-31, definitions of recruitment and retention bonuses, an explanation of types of circumstances and positions that may receive bonuses, a sample service agreement, and reporting requirements of the agency. The model policy does not limit the dollar amount of the bonuses provided or the length of required employee service. The agencies generally require a complete or prorated payback of bonuses provided if the terms of the service agreement are not met.

The committee received testimony from agencies that have implemented recruitment and retention bonus pilot programs. The agencies supported continuation of the programs as a way to compete with private industries, to use as an incentive for individuals to relocate to the state, and to financially assist individuals who are relocating. In addition several agency representatives were in favor of expanding the program to nonclassified employees. As of October 31, 2002, recruitment and retention bonus pilot programs have been implemented by the following agencies:

Agency	Number, Type, and Total Amount of Bonuses Obligated
Department of Human Services	8 recruitment bonuses (\$9,251)
	9 retention bonuses (\$20,000)
Highway Patrol	Primarily awarded to registered nurses and addiction counselors
	10 recruitment bonuses (\$3,500)
	Primarily awarded to current patrol officers for referring a patrol officer applicant who is hired and makes it through the academy training
Department of Transportation	No retention bonuses
	45 recruitment bonuses (\$181,777)
	No retention bonuses
	Primarily awarded to engineers

Agency	Number, Type, and Total Amount of Bonuses Obligated
Bank of North Dakota	No recruitment bonuses 2 retention bonuses (\$6,500) Awarded to programmers
Department of Corrections and Rehabilitation	3 recruitment bonuses (\$3,487) No retention bonuses Awarded to registered nurses and a probation officer
Information Technology Department	7 recruitment bonuses (\$18,000) No retention bonuses Primarily awarded to programmers
Job Service North Dakota	Recruitment and retention bonus program but no bonuses provided yet
Total	73 recruitment bonuses (\$216,016) 11 retention bonuses (\$26,500)

Recommendation

The committee recommends House Bill No. 1032 to continue the recruitment and retention bonus pilot program through June 30, 2005.

HOUSING DEVELOPMENT FUND REPORT

North Dakota Century Code Section 6-12-05 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 section 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 section is effective for four taxable years and will expire on December 31, 2002. The housing development fund program would allow 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 generally provide financing based on the appraised value of each 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 would provide 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.

The committee received information from a representative of Lewis and Clark CommunityWorks, a nonprofit corporation created in 1995 with the primary goal of creating a revolving loan fund to provide affordable single-family housing for individuals who do not qualify for government housing development programs. Lewis and Clark CommunityWorks anticipates lending \$3 million to \$6 million in the next three to four years. The committee learned Lewis and Clark CommunityWorks is a congressionally chartered nonprofit organization and has access to a secondary market that purchases the types of loans made by Lewis and Clark CommunityWorks.

The committee also received information from representatives of the North Dakota Bankers Association and Independent Banks of North Dakota regarding the background of the housing development fund legislation. The committee learned multifamily housing units generally require a minimum of 12 to 18 units to generate sufficient cashflow for financing. In small towns a home can often be purchased for \$20,000 to \$25,000. The rent on a new housing unit would be more expensive than the payments made to purchase a home in these markets.

Since enactment of the legislation no housing development funds have been established, so no reports were provided to the committee.

Conclusion

The committee does not make any recommendation regarding continuation of the housing development fund legislation, which will expire on December 31, 2002.

BUDGET MONITORING

Status of the State General Fund

The committee received reports from the Office of Management and Budget regarding the status of the state general fund. Based on the July 2002 revised 2001-03 forecast, revenue collections, excluding the beginning balance, are estimated to be \$1.64 billion, \$65 million less than the \$1.71 billion forecasted at the end of the 2001 legislative session. Pursuant to Section 12 of House Bill No. 1015, the Budget Section approved in August 2002 a contingent transfer from the Bank of North Dakota to the general fund, not to exceed the lesser of \$25 million or the actual shortfall as compared to the March 2001 legislative forecast. The committee learned as of September 30, 2002, the projected June 30, 2003, general fund balance prior to the Bank of North Dakota transfer is estimated to be (\$14,711,812), which reflects the July 2002 allotment savings of 1.05 percent or approximately \$18.3 million. The projected ending general fund balance after the Bank of North Dakota transfer is zero, or \$12 million less than the projected ending general fund balance made at the close of the 2001 legislative session.

Actual revenue collections through September 2002 were 1.4 percent or \$13.6 million more than the July 2002 revised revenue forecast, and 3.9 percent or

\$37 million more than the same period during the 1999-2001 biennium.

The committee learned 2001-03 biennium deficiency or supplemental appropriations requests identified as of October 2002 total \$28 million. This includes an estimated \$14 million request from the Department of Human Services due to a Medicaid program funding shortfall, a decrease in the federal medical assistance percentage (FMAP), and an increase in the number of eligible recipients; and an estimated \$12 million request from the Division of Emergency Management for disasters occurring between 1997 and 2001. In addition the Department of Transportation is anticipated to request a \$12 million deficiency appropriation from the highway fund relating to federal emergency relief projects.

Oil 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 2001-03 biennium. The committee learned that for the period January through August 2002, 74 oil wells were drilled in North Dakota, 63 of which were producing wells. The market price per barrel of oil in September 2002 was \$24.53, or \$3.86 more than the projected price per barrel of \$20.67.

Through August 2002 general fund revenues from oil and gas production taxes were \$23.9 million, or \$2.4 million below the March 2001 forecast. General fund revenues from the oil extraction taxes were \$12.4 million or \$3.6 million below the March 2001 forecast for the same period. Oil and gas production taxes through August 2002 were \$973,469 more and oil extraction taxes were \$228,954 less than the revised revenue forecast for the period. The committee learned, based on the revised revenue forecast for the 2001-03 biennium released by the Office of Management and Budget in July 2002, oil tax revenues are estimated to be \$61 million. Pursuant to NDCC Section 57-51.1-07.2, oil tax revenues in excess of \$62 million are to be transferred to the permanent oil tax trust fund. Approximately \$13 million was transferred into the permanent oil tax trust fund at the end of the 1999-2001 biennium. The original estimate at the close of the 2001 legislative session anticipated \$9 million to be deposited into the fund at the end of the 2001-03 biennium. Based on current estimates no amount will be transferred on July 1, 2003.

Agency Compliance With Legislative Intent

The committee received a report from the Legislative Council staff on state agency compliance with legislative intent for the 2001-03 biennium. The report is based on information gathered by the Legislative Council staff during visitations with agency administrators and fiscal personnel in early 2002. 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.

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 2001-03 interim. The committee's review emphasized the expenditures of major state agencies, including the charitable and penal institutions, the state school 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:

1. Actual expenditures for the Department of Human Services through August 2002 for the temporary assistance for needy families (TANF) program were \$16.4 million, \$2 million or 13.9 percent more than estimated expenditures of \$14.4 million.
2. Actual Medicaid expenditures, excluding inter-governmental transfer payments, through August 2002 were \$787 million, \$30 million more than the original appropriation estimate of \$757 million and \$3 million more than the June 2002 projection. The 2001-03 biennium general fund share of Medicaid expenditures is projected to be \$14.3 million more than the original appropriation.
3. The Department of Public Instruction's current estimate for unspent state school aid funds at the close of the 2001-03 biennium is \$597,915. This estimate is based on the actual number of weighted student units during the first year of the biennium which was 113,172, or 97 more than the original estimate of 113,075, and the original estimate of 110,791 for the second year of the biennium. Any funds remaining unspent at the end of the biennium are by law to be distributed as follows:
 - a. The first \$2 million to assist school districts that have experienced declining enrollment during the periods 1997-98 to 2000-01.
 - b. The second \$2 million as hold harmless payments to school districts for state aid and teacher compensation payments.
 - c. Any remaining amount as additional per student payments.
4. The 2001 Legislative Assembly appropriated \$35 million for teacher compensation payments of \$1,000 the first year of the biennium and \$2,000 the second year of the biennium to approximately 8,884 instructional personnel. Due to changes in the actual number of qualifying personnel from year to year, approximately \$245,000 in teacher compensation payments is anticipated to be unspent at the end of the 2001-03 biennium.

5. House Bill No. 1301 provided a general fund appropriation of \$1.7 million for bonus payments to school districts that reorganize with one or more contiguous school districts pursuant to NDCC Section 15.1-12-11.1. The portion of the appropriation not used for reorganization bonus payments, estimated in October 2002 to be \$456,000, will be returned to the general fund at the end of the biennium.
6. Total expenditures at the charitable and penal institutions for the first year of the 2001-03 biennium were \$81,813,493, which is \$3,088,220 or 3.6 percent less than estimated. Total revenues for the period were \$26,132,975, which is \$3,781,206 or 12.6 percent less than estimated primarily due to timing of Medicaid collections at the Developmental Center (\$1 million) and underfunding associated with vacant positions at the State Hospital (\$1.1 million).

Status of State Investment Board Investments

The committee received a report from a representative of the State Investment Board on the status of investments, earnings, and future investment plans for the State Investment Board. Pursuant to NDCC Section 21-10-06, the State Investment Board is responsible for 10 separate funds. The funds are combined into two trusts--the pension trust for qualified plans and the insurance trust for nonqualified investments. The committee learned the historical market value of the pension trust was \$2.2 billion on August 31, 2002, as compared to \$2.5 billion on June 30, 2001. The historical market value of the insurance trust was \$987 million on August 31, 2002, as compared to \$966 million on June 30, 2001. The health care trust fund, however, was added to the insurance trust portfolio in July 2001 with an initial contribution of \$53.5 million. The fiscal yearend 2002 market value-based return was a negative 7.77 percent for the pension trust and a negative 1.8 percent for the insurance trust.

Status of Bank of North Dakota Investments

The committee received a status report from a representative of the Bank of North Dakota on investments, bank profits, and transfers to the state general fund. The committee learned the Bank of North Dakota's calendar year 2002 profit is forecasted to be \$32 million, \$1.1 million less than the \$33.1 million earned in 2001. The Bank's forecasted 2001-03 biennium profit is approximately \$62 million.

Pursuant to Section 11 of House Bill No. 1015, the Bank of North Dakota is to transfer up to \$60 million to the general fund during the 2001-03 biennium. The Bank transferred \$30 million to the general fund during the first year of the biennium and anticipates transferring the remaining \$30 million before the end of the biennium.

Section 12 of House Bill No. 1015 provides for a contingent Bank of North Dakota transfer to the general fund of the lesser of \$25 million or the revenue shortfall of actual collections compared to the March 2001

legislative forecast. Based on actual revenue collections through September 30, 2002, and the July 2002 revised revenue forecast for the remainder of the 2001-03 biennium, this transfer is estimated to be \$14.7 million. The contingent transfer from the Bank will primarily consist of accumulated earnings.

The committee learned the Bank of North Dakota investment portfolio had a December 31, 2001, market value of approximately \$329.6 million. The average yield on the investments is 3.1 percent. The majority of the investment portfolio is in short-term money market investments.

Status of Land Department Investments

The committee received a report from a representative of the Land Department on the status of the 13 permanent educational trust funds. The committee learned that as of June 30, 2002, total permanent trust assets were \$652.9 million, \$14.5 million or 2.17 percent less than the balance of June 30, 2001. The June 30, 2002, balance included additions from mineral royalties (\$7.1 million), oil extraction taxes (\$1.7 million), and tobacco settlement lawsuit proceeds (\$12.1 million), all of which were not enough to offset the negative return posted by the combined equity and convertible securities portfolio.

The projected 2001-03 biennium total distributions from the 13 permanent educational trust funds is \$63 million, including \$57.8 million from the common schools trust fund. The total Board of University and School Lands-approved distributions for the 2003-05 biennium is \$64.5 million, including \$60 million from the common schools trust fund.

Distributions from the permanent educational trust funds are based on the funds' projected income earned during the biennium from mineral and surface rentals and investment income. Pursuant to NDCC Section 15-03-05.1, the capital gains earned on the permanent trust investment portfolio are also available for distribution but must be amortized in equal annual installments over a 10-year period. Total permanent educational trust fund capital gains distributions for the 2001-03 biennium are anticipated to be \$6.6 million, or 39.5 percent of total amortized capital gains, including \$5.6 million or 35.8 percent of amortized gains, from the common schools trust fund. The Board of University and School Lands-approved 2003-05 capital gains distributions for the permanent educational trust funds are \$7.0 million, or 46.3 percent of the total amortized capital gains, including \$6.5 million or 46.8 percent of amortized capital gains from the common schools trust fund.

Status of the Public Employees Retirement System Investments

The committee received information on the status of the Public Employees Retirement System investments. The committee learned the net market asset value of the Public Employees Retirement System on July 1, 2002, was \$1,028,897,932, which equates to a funded ratio of 103.9 percent; in comparison the balance on July 1,

2001, was \$1,134,178,963, which equates to a funded ratio of 112.4 percent. The funded ratio is calculated by dividing the actuarial value of assets by the accrued liability of the fund, unless the market value exceeds the actuarial value, in which case the market value is divided by the accrued liability.

Status of Capital Construction Bonding

The committee received information from a representative of the Industrial Commission on the status of capital construction bond payments, as compared to the statutory sales tax limitation, and outstanding debt balances, including an analysis of various types and corresponding balances of capital construction bonds issued. Pursuant to NDCC Section 54-17.2-23, the general fund portion of capital construction bond payments is limited to 10 percent of the equivalent of 1 percent sales, use, and motor vehicle excise tax. The Industrial Commission indicated the projected amount available for debt service payments for new capital construction projects is \$1,431,662 for the 2005-07 biennium. Sales tax collections anticipated for periods after the 2003-05 biennium are based on 4 percent increases each subsequent biennium.

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 2001-02 interim.

The committee received information regarding the history of the bistate authority legislation. The 1996 South Dakota Legislature enacted a law creating a legislative commission to meet with a similar commission from North Dakota to study ways North Dakota and South Dakota could collaborate to provide government services more efficiently. As a result of the joint commission, the North Dakota Legislative Assembly enacted legislation relating to higher education and the formation of cooperative agreements with South Dakota. The South Dakota commission proposed several initiatives, but the South Dakota Legislative Assembly did not approve any of the related bills.

During the 2001-02 interim, no proposed agreements were submitted to the committee for approval to form a bistate authority with the state of South Dakota.

BUDGET TOURS

During the interim, the Budget Committee on Government Services functioned as a budget tour group of the Budget Section and visited the West Central Human Service Center, International Peace Garden, North Central Human Service Center, and State Fair Association. 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 2003 legislative session.

BUDGET COMMITTEE ON HEALTH CARE

The Budget Committee on Health Care was assigned responsibilities in nine areas. Section 2 of House Bill No. 1407 directed a study of existing mandated health insurance coverage and the feasibility and desirability of repealing state laws mandating health insurance coverage. The section also provided that the Legislative Council receive a report before July 1, 2002, from the Insurance Commissioner on an evaluation of existing health insurance coverage mandates on the cost or effect on insurance premiums as compared to the benefits of reducing the need for future health care services due to early identification and treatment. North Dakota Century Code (NDCC) Section 54-03-28 provides that the Legislative Council contract with a private entity, after receiving recommendations from the Insurance Commissioner, to provide a cost-benefit analysis of each legislative measure or amendment mandating health insurance coverage of services or payment for specified providers of services.

Senate Concurrent Resolution No. 4027 directed a study of the prices for prescription drugs and possible mechanisms to lower costs to consumers and the state, and whether the state should establish a program to assist in the purchase of prescription drugs based upon income.

Section 3 of House Bill No. 1441 directed a study of the coordination of the medical assistance and the children's health insurance programs, including the development of a single application form for both programs, whether the children's health insurance program (CHIP) should be administered by the state or the counties, the effects of eliminating the asset eligibility requirement for the medical assistance program, the standardization of the definition of "income" for all programs administered by the Department of Human Services, and the feasibility and desirability of seeking a federal waiver to allow the CHIP plan to provide coverage for a family through an employer-based insurance policy if an employer-based insurance policy is more cost-effective than the traditional plan coverage for the children. North Dakota Century Code Section 50-29-02 provides that the Legislative Council is to receive a report from the Department of Human Services describing enrollment statistics and costs associated with the CHIP state plan.

Section 1 of Senate Bill No. 2330 directed a study of the coordination of benefits for children with special needs under age 21 among the Department of Public Instruction, the Department of Human Services, and private insurance companies, with the purpose of optimizing and coordinating resources and expanding services, including augmentative communication devices and therapy services.

North Dakota Century Code Section 43-12.1-08.2 provides that the Legislative Council receive an annual report from the State Board of Nursing on its study, if conducted, of the nursing educational requirements and the nursing shortage in this state and the implications for rural communities.

Section 1 of Senate Bill No. 2288 provided that the Legislative Council receive a report from the Insurance Commissioner before November 1, 2002, regarding motor vehicle insurance independent medical examinations. These responsibilities were assigned to the committee.

Committee members were Senators Judy Lee (Chairman), Dennis Bercier, Gary A. Lee, Michael Polovitz, Ken Solberg, and Russell T. Thane and Representatives Rick Berg, Audrey B. Cleary, William R. Devlin, David Drovdal, Jim Kasper, George Keiser, Carol A. Niemeier, Kenton Onstad, Chet Pollert, Todd Porter, Clara Sue Price, and Robin Weisz.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2002. The Council accepted the report for submission to the 58th Legislative Assembly.

HEALTH INSURANCE COVERAGE MANDATES STUDY

The committee was assigned three responsibilities regarding mandated health insurance coverage:

1. Section 2 of House Bill No. 1407 directed a study of existing mandated health insurance coverage of services and the feasibility and desirability of repealing state laws mandating health insurance coverage of services.
2. Section 2 of House Bill No. 1407 provided that the Legislative Council receive a report from the Insurance Commissioner by July 1, 2002, of an evaluation of existing health insurance coverage mandates on the cost or effect on insurance premiums as compared to the benefits of reducing the need for future health care services due to early identification and treatment.
3. North Dakota Century Code Section 54-03-28 provides that the Legislative Council contract with a private entity, after receiving recommendations from the Insurance Commissioner, to provide a cost-benefit analysis of every legislative measure or amendment mandating health insurance coverage of services or payment for specified providers of services. The committee was assigned the responsibility to make a recommendation regarding this contract.

Health Insurance Mandate Definition

The committee received information on the definition of health insurance mandates. The Insurance Department categorizes and defines mandated health benefits as follows:

1. Service mandates - Benefit or treatment mandates that require insurers to cover certain treatments, illnesses, services, or procedures. Examples include child immunizations, well child visits, and mammography.
2. Beneficiary mandates - Mandates that define the categories of individuals eligible to receive

benefits. Examples include newborns from birth, adopted children from the time of adoption, and handicapped dependents.

3. Provider mandates - Mandates that require insurers to pay for services provided by specific providers. Examples include nurse practitioners, optometrists, and psychologists.
4. Administrative mandates - Mandates that relate to certain insurance reform efforts that increase the administrative expenses of a specific health care plan. Examples include information disclosures, precluding companies from basing policy rates on gender, and precluding insurers from denying coverage for preauthorized services.

Analysis of Health Insurance Mandates

The Insurance Commissioner contracted with Milliman USA, Consultants and Actuaries, Minneapolis, Minnesota, for an analysis of North Dakota's existing health insurance mandates and to provide a proposed format for analysis of future legislative mandates.

The consultant's report was presented to the committee and included:

1. An evaluation of the costs and benefits of North Dakota's 23 specified mandates. The specific mandates for service, beneficiary, provider, and administrative areas are detailed in the schedules later in this report which detail the

impact of each mandate on insurance premiums.

2. An evaluation of the impact that premium levels have on the uninsured in North Dakota, including the impact of mandated benefits on the number of uninsured.
3. An evaluation of the impact of mandated benefits on North Dakota's small employer basic and standard plans.
4. An analysis tool that could be used to evaluate the costs and benefits of new proposed mandates.

Impact of Health Insurance Mandates

The following schedules identify the consultant's estimated direct monthly premium impact by mandate type on representative health insurance plans in North Dakota:

Estimated Direct Premium Impact by Mandate Type		
Mandate Type	Monthly Premium Impact	As a Percentage of Total Plan Cost
Service - All mandates	\$8.26-\$69.43	5.1%-27.2%
Service - All but NDCC Section 26.1-36-06 (drugs and chiropractic care)	\$8.26-\$20.57	5.1%-8.2%
Beneficiary	\$6.09-\$19.78	3.9%-8.1%
Provider	\$0.44-\$1.27	0.3%-0.7%
Administrative	\$2.27-\$3.73	1.4%-1.7%

Estimated Direct Premium Impact of Selected Mandates				
Representative Plan: Individual - Indemnity				
Monthly Premium for This Plan: \$239.12				
Mandate Type	North Dakota Century Code Section	Mandate Title	Monthly Premium	
			Cost	As a Percentage of Total Plan
Service	26.1-36-06	Optional drugs and chiropractic care	N/A	N/A
	26.1-36-06.1	Off-label uses of drugs	\$5.31	2.2%
	26.1-36-08	Substance abuse treatment	N/A	N/A
	26.1-39-09	Mental disorder treatment	N/A	N/A
	26.1-36-09.1	Mammogram examination	\$1.13	0.5%
	26.1-36-09.2	Involuntary complications of pregnancy	\$4.47	1.9%
	26.1-36-09.3	TMJ disorder	\$0.52	0.2%
	26.1-36-09.4	Preventive health care (copayments for standard plan)	N/A	N/A
	26.1-36-09.6	Prostate-specific antigen test	\$0.29	0.1%
	26.1-36-09.7	Foods and food products for inherited metabolic diseases	\$0.04	0.0%
Beneficiary	26.1-36-09.8	Postdelivery care for mothers and newborns	\$0.00	0.0%
	26.1-36-09.9	Dental anesthesia and hospitalization	\$0.33	0.1%
	26.1-36-09.10	Prehospital emergency medical services	\$0.21	0.1%
	26.1-36-07	Newborn and adopted children	\$3.78	1.6%
	26.1-36-20	Incarcerated juvenile	\$0.07	0.0%
	26.1-36-21	Incarcerated adult	\$0.24	0.1%
	26.1-36-22	Covered dependents	\$5.39	2.3%
	26.1-36-23	Continuation/conversion after termination of employment	N/A	N/A
	26.1-36-23.1	Continuation/conversion of former spouse/dependents	N/A	N/A
	26.1-36-09.5	Advanced registered nurse practitioner	\$0.93	0.4%
Provider	26.1-36-12.2	Freedom of choice for pharmacy services	\$0.00	0.0%
	43-13-31	Optometrist services	\$0.30	0.1%
Administrative	26.1-36-03.1	Information disclosure	\$3.24	1.4%

Estimated Direct Premium Impact of Selected Mandates				
Representative Plan: Individual - PPO				
Monthly Premium for This Plan: \$157.79				
Mandate Type	North Dakota Century Code Section	Mandate Title	Monthly Premium	
			Cost	As a Percentage of Total Plan
Service	26.1-36-06	Optional drugs and chiropractic care	N/A	N/A
	26.1-36-06.1	Off-label uses of drugs	\$3.13	2.0%
	26.1-36-08	Substance abuse treatment	N/A	N/A
	26.1-39-09	Mental disorder treatment	N/A	N/A
	26.1-36-09.1	Mammogram examination	\$0.78	0.5%
	26.1-36-09.2	Involuntary complications of pregnancy	\$3.21	2.0%
	26.1-36-09.3	TMJ disorder	\$0.37	0.2%
	26.1-36-09.4	Preventive health care (copayments for standard plan)	N/A	N/A
	26.1-36-09.6	Prostate-specific antigen test	\$0.16	0.1%
	26.1-36-09.7	Foods and food products for inherited metabolic diseases	\$0.04	0.0%
	26.1-36-09.8	Postdelivery care for mothers and newborns	\$0.22	0.1%
	26.1-36-09.9	Dental anesthesia and hospitalization	\$0.22	0.1%
	26.1-36-09.10	Prehospital emergency medical services	\$0.12	0.1%
	Beneficiary	26.1-36-07	Newborn and adopted children	\$2.50
26.1-36-20		Incarcerated juvenile	\$0.05	0.0%
26.1-36-21		Incarcerated adult	\$0.16	0.1%
26.1-36-22		Covered dependents	\$3.39	2.1%
26.1-36-23		Continuation/conversion after termination of employment	N/A	N/A
26.1-36-23.1		Continuation/conversion of former spouse/dependents	N/A	N/A
Provider	26.1-36-09.5	Advanced registered nurse practitioner	\$0.46	0.3%
	26.1-36-12.2	Freedom of choice for pharmacy services	\$0.49	0.3%
	43-13-31	Optometrist services	\$0.15	0.1%
Administrative	26.1-36-03.1	Information disclosure	\$2.27	1.4%

Impact of Premium Levels on the Uninsured

The consultant's evaluation of the impact of premium levels on the uninsured resulted in the following findings:

1. The uninsured rate in North Dakota of 13 percent is lower than the national average of 16 percent.
2. The uninsured are less likely to seek necessary medical care.
3. The uninsured rate is dependent on multiple variables.
4. Premium increases, including those associated with the implementation of state mandates, could result in some employers and individuals dropping coverage.
5. Premium reductions, including those associated with the elimination of state mandates already implemented, will not necessarily result in uninsured individuals and employers purchasing coverage.

Small Employer Basic and Standard Plans

North Dakota Century Code Section 26.1-36.3-06 requires carriers of small employer business to offer all plans available to the small employer market in the state, including the lower-cost, state-defined basic and standard plans. The standard plan generally has fewer benefits than other marketed plans of insurance carriers and the basic plan has even fewer benefits.

The purpose of the basic and standard plans is to provide small employers with lower-cost plan options. Based on the consultant's evaluation, the value of a basic plan should be 72.6 percent of the value of the standard plan. Based on the consultant's review of basic

and standard premiums charged by insurance companies in North Dakota, basic plan premiums range from 61 to 102 percent of standard plan premiums.

The consultant recommended the following initiatives to ensure that affordable health insurance plans are available to small employers:

1. Review benefit factors - The Insurance Department could enhance its monitoring of benefit factors to ensure that factors for the basic and standard plans have not been loaded to reflect adverse selection and also to ensure that the plans have not been artificially priced higher for the purpose of encouraging employers to choose other, more expensive plans.
2. Encourage development of alternative basic plans.
3. Review the possibilities of offering "consumer-driven health plans" such as a high-deductible plan that allows employers the opportunity to make catastrophic coverage available to employees at a fairly reasonable cost.
4. Develop scheduled plans - Scheduled plans pay fixed maximum dollar amounts for specified services and provide the opportunity to cover a specified portion of medical costs. These plans are generally more affordable since they are not intended to cover the full cost of services.

Evaluation of Future Mandates

The report included a proposed analysis tool that could be used in evaluating the costs and benefits of proposed mandated health insurance benefits. The tool is based on a point system that allows for a consistent

evaluation of the proposed mandates. Once a potential health insurance mandate has been identified, evaluation of the proposal could include:

1. A review of research information available on the costs and benefits of the mandate.
2. Completion of an evaluation form based on the information reviewed and personal beliefs.
3. Discussion and debate based on the completed evaluation forms.

The evaluation process can be completed generally within a month or less and does not require specialized training for the evaluators. The evaluation form measures the evaluator's judgment of the impact of the mandate. The form includes the following nine criteria:

1. How prevalent is the underlying illness or condition?
2. What is the impact of treatment on health status?
3. What is the impact of treatment on sick days, disability, and worker productivity?
4. To what extent is this treatment or service already covered by health insurance?
5. How often will the mandated service be used?
6. What is the expected direct cost impact on insurance premiums?
7. What are the indirect costs and benefits to the insurance company?
8. What is the impact of this mandate on costs currently funded by North Dakota?
9. What is the impact of this mandate on individuals?

A percentage is applied to each of the nine criteria in relation to the other criteria as determined appropriate by the evaluator and each criteria then scored from zero to three points. Once the total weighted average is determined, the scores are compared among the evaluators and used to stimulate discussion and debate on the proposed mandate.

Health Insurance Mandates - Other States

The committee reviewed health insurance coverage mandates of other states. The committee learned that in 1965 there were only seven mandated health insurance benefits imposed by the states. By 1997 there were approximately 1,000 state-mandated benefits. Based on a survey conducted by Blue Cross Blue Shield in 1999, the number of state health insurance mandate laws totaled 1,391, of which 677 mandated certain benefits, 444 mandated the coverage of specific provider services, 241 mandated specific persons be covered, and 29 mandated coverage for a specific procedure.

The committee reviewed other states' efforts to limit or evaluate the effect of enactment of new health insurance benefit mandates. Based on surveys conducted by Blue Cross Blue Shield in 2000 and 2001, 24 states have requirements for the evaluation of proposed health insurance benefit mandates. The following schedule identifies states with mandate evaluation requirements, the year each requirement was enacted, and the party

responsible for conducting or arranging for the evaluation:

State	Year Enacted	Party Responsible for Evaluation
Arizona	1985	Proponents of the legislation
Arkansas	2001	Advisory Commission on Mandated Health Insurance Benefits
Colorado	1998	State Personnel Department
Florida	1987	Proponents of the legislation
Georgia	1989	State Insurance Department
Hawaii	2001	Legislative advisory panel
Iowa	1991	State Insurance Department
Kansas	1990, 1999	State Insurance Department
Kentucky	1998	Proponents of the legislation
Louisiana	1997, 1999	Legislative fiscal staff
Maine	1998	State Insurance Department
Maryland	1998	Health Care Access and Cost Commission
Nevada	1989	Legislatively established commission
New Jersey	1999	Task Force on Affordability of Health Care
North Dakota	2001	Legislative Council (contract with consultant)
Ohio	2000	Legislative Budget Office
Oregon	1985	State Health Council
Pennsylvania	1986	Health Care Cost Containment Council
South Carolina	1990	State Budget Control Board
Tennessee	1989	Legislative Fiscal Review Committee
Texas	1999	Legislatively established commission
Virginia	1990	Advisory Commission on Mandated Benefits
Washington	1997	Proponents of the legislation
Wisconsin	1988	State Department of Employee Trust Funds

North Dakota Health Insurance Policy Information

The committee received information on the number of health insurance policies issued in North Dakota. The committee learned that as of August 31, 2001, Blue Cross Blue Shield of North Dakota had in effect 153,365 employer-sponsored group health insurance policies covering 364,233 members. The company also had 64,547 individual health insurance policies covering 79,179 members.

The committee received information on the following insurance companies that ceased doing business in North Dakota during 2001:

1. Conseco Medical Insurance Company, including the following subsidiary companies:
 - a. Pioneer Life Insurance Company of Illinois.
 - b. National Casualty Company.
 - c. Washington National Insurance Company.
2. Sentry Select Insurance Company.

3. American Republic Insurance Company.
4. Trust Mark Insurance Company.

Although the Insurance Department does not require an insurance company to give a reason for discontinuing business in North Dakota, the Insurance Department believes these companies may have discontinued doing business in North Dakota for the following reasons:

1. Rising health care and prescription costs.
2. A company's inability to develop a provider agreement with major health care providers.
3. The state's small population.

The committee learned that Blue Cross Blue Shield of North Dakota opposes health insurance mandates for several reasons, including:

1. Mandates increase cost to members - Approximately 20 percent of total health-care services paid for by Blue Cross Blue Shield relate to mandated benefits and services.
2. Mandates reduce flexibility in designing and marketing policies.
3. Mandates make it difficult to change benefits to reflect changes in acceptable medical procedures.
4. Coverage options should be determined by consumer demand, not legislative mandates.

The committee learned that many of the benefits mandated by law would be included in health plans offered by Blue Cross Blue Shield of North Dakota even if the mandates were not in place because the coverage is demanded by policyholders.

House Bill No. 1226, approved by the 2001 Legislative Assembly, authorized the issuance of a basic health insurance policy for individuals and small employers. The basic health insurance policy is not subject to certain mandates. Such a policy was previously authorized by the 1991 Legislative Assembly, but the policies were not successfully marketed to the public.

The committee learned that Blue Cross Blue Shield does not intend to market a basic plan as authorized by the 2001 Legislative Assembly because consumer demand does not support the development of such a plan. At a minimum most consumers want prescription drug coverage in a health insurance plan.

The committee learned that as of August 31, 2002, Blue Cross Blue Shield of North Dakota had 29 basic health insurance contracts covering 38 subscribers and 4 standard contracts covering 13 subscribers. The committee learned even though these plans are being offered, little interest exists for these plans in the market. The committee learned the basic plan provides very basic benefits and does not provide prescription drug coverage, which is very much in demand by the public. The committee reviewed Blue Cross Blue Shield monthly premiums for select plans as follows:

Plan	Family Premium	Single Premium
Basic plan	\$442.10	\$170.10
Standard plan	\$606.30	\$233.20
Select choice 250 plan	\$548.20	\$210.80

Other interested persons testified before the committee regarding health insurance mandates and provided the following comments:

1. For many of the state's citizens, mandates for mental health coverage have been the only assurance that citizens can access proper treatment and return to an independent life.
2. Employers across the state are struggling to maintain health insurance benefits for employees due to the rising cost of health insurance premiums.
3. Regarding national studies on the effectiveness of alternative treatments for mental illness, the use of these alternative treatments is increasing, and the Mental Health Association in North Dakota is concerned about the lack of research supporting such alternative treatments for mental illnesses. Persons who utilize over-the-counter treatments for mental illness are missing an important step in the treatment process--assessment and diagnosis by a physician or mental health professional.
4. The Mental Health Association believes mental health mandates are cost-effective.

Future Legislation Mandating Health Insurance Coverage

Statutory Requirements

North Dakota Century Code Section 54-03-28, enacted by the 2001 Legislative Assembly, provides that a legislative measure mandating health insurance coverage may not be acted on by any committee of the Legislative Assembly unless accompanied by a cost-benefit analysis. The cost-benefit analysis is to be prepared by a private entity under contract with the Legislative Council, and the Insurance Commissioner is to pay for the cost of the contracted services.

The cost-benefit analysis must include:

1. The extent to which the proposed mandate would increase or decrease the cost of services.
2. The extent to which the proposed mandate would increase the use of services.
3. The extent to which the proposed mandate would increase or decrease the administrative expenses of insurers and the premiums paid by insureds.
4. The impact of the proposed mandate on the total cost of health care.

Section 54-03-28 provides that a majority of the members of the committee to which the legislative measure is referred, acting through the chairman, has the authority to determine whether a legislative measure mandates coverage of services. The section also provides that any amendment to a legislative measure that mandates health insurance coverage may not be acted on by a committee of the Legislative Assembly unless the amendment is also accompanied by a cost-benefit analysis.

Issues Considered

The committee considered issues associated with the process of requesting, completing, and paying for the cost-benefit analyses of legislative measures mandating health insurance coverage during the 2003 legislative session. Issues discussed included:

1. The timeframe required for completion of the review and analysis process, including:
 - a. The length of time between when a measure is introduced or an amendment adopted and when a cost-benefit analysis is completed may result in a delay in acting on the measure or amendment.
 - b. If many bills are simultaneously referred to the contracted consultant for analysis, the length of time required for the consultant to complete each analysis may be extended.
2. The cost of preparing a cost-benefit analysis for each proposed legislative measure mandating health insurance coverage, including:
 - a. The Insurance Department recommended the committee contract with Milliman USA to conduct the cost-benefit analysis of legislative measures mandating health insurance coverage being considered by the 2003 Legislative Assembly. A preliminary estimate by Milliman USA indicated the cost for the initial analyses completed to be between \$5,000 to \$15,000 per analysis and a cost of \$4,000 to \$8,000 for each subsequent analysis. Based on Insurance Department review of the most recent five legislative sessions, the committee learned that from 3 to 10 bills with a health insurance mandate have been introduced in each session. House Bill No. 1407 (2001) appropriates \$55,000 from the insurance regulatory trust fund to the Insurance Department for the cost of the contracted cost-benefit analysis services required during the 2003 Legislative Assembly. North Dakota Century Code Section 54-03-28 provides that the Insurance Department will pay for the cost-benefit analysis services but does not limit the department's liability for the cost. Consequently, if the total cost of the analyses required by Section 54-03-28 exceeds the appropriation provided to the Insurance Department, the department may need funding in excess of the \$55,000 appropriated.
 - b. Although NDCC Section 54-03-28 allows the committee to determine if a measure is a mandate, the section also provides that any measure determined to include a health insurance mandate is required to include a cost-benefit analysis. The committee's discretion relates to determining if a measure includes a health insurance mandate. Once a measure is determined to

include a health insurance mandate, a cost-benefit analysis must be completed.

Options

The committee considered options to address these issues and to facilitate the health insurance mandate review. Options considered include:

1. Legislative rules - Legislative rules changes were considered which would have precluded bills mandating health insurance coverage from being introduced after the fifth legislative day and required the Legislative Council or the Insurance Department to review bills introduced, and if necessary, request an analysis before referral to a committee. The committee referred the proposed rules changes to the Legislative Management Committee. The Legislative Management Committee has not approved the rules changes.
2. Statutory changes - The committee considered the bill drafts that would have provided:
 - a. Any health insurance coverage mandate approved by the Legislative Assembly apply only to the state public employees group health insurance program for a period of two years. After the first year, the Public Employees Retirement System (PERS) would prepare a report on the mandate's actual costs and benefits for consideration by the Legislative Council in determining if the mandate should be amended or repealed before becoming effective for other health insurance programs.
 - b. Any health insurance coverage mandate approved by the Legislative Assembly would not be implemented until studied by the Legislative Council.
 - c. Any health insurance coverage mandate approved by the Legislative Assembly must include an expiration date.
3. Cost-limiting provisions - In order to limit the costs incurred by the Insurance Department for analyses of legislative measures mandating health insurance coverage, the committee considered the possibility of including cost-limiting provisions in any contract between the Legislative Council and an actuarial consultant. Such provisions could provide for the preparation of a limited analysis when determined appropriate by the committee.

Testimony on Cost-Benefit Analysis Issues

Representatives of PERS expressed the following concerns regarding the bill draft involving the PERS health plan in a health insurance mandate pilot project:

1. In the past, mandates have been incorporated into the PERS health plan the second biennium after being passed by the Legislative Assembly, which has allowed funding for the enhanced benefits to accrue with the renewal of the plan

and become part of the premium budgeted for the subsequent biennium. The proposed bill draft would require the mandate to be effective during the first biennium after the mandate is passed which will require that funding be provided for that biennium.

2. Currently proposed enhancements to the PERS retirement plan to be considered during the next session must be presented to the Legislative Council's Employee Benefits Programs Committee for technical and actuarial review. The same protocol may be beneficial for health insurance mandates.
3. The bill draft requires PERS to report to the Legislative Council on the effect of the mandate after the first year of implementation. It may be difficult to develop meaningful information and determine clear conclusions with only one year of data. In addition complete first-year data may not be available until the October prior to a legislative session, which would make it difficult for PERS to report to the Legislative Council before it concludes its interim work.
4. Administrative costs of reviewing and evaluating the mandate would have a financial impact on the PERS health plan.
5. Evaluating the costs and benefits of a health insurance benefit is difficult since quantitative information upon which to base the analysis is generally not available.

The Insurance Department testified the current statute will provide useful information and should remain unchanged for at least one legislative session.

Recommendations

The committee recommends Senate Bill No. 2029 to provide that any health insurance coverage mandate approved by the Legislative Assembly apply only to the state public employees group health insurance program for a period of two years during which time PERS is to evaluate the mandate's actual costs and benefits and prepare a report for consideration by the next Legislative Assembly in determining if the mandate should be allowed to expire or expanded to all insurers.

The committee recommends that, pursuant to NDCC Section 54-03-28, the Legislative Council contact with Milliman USA, for cost-benefit analyses of legislative measures mandating health insurance coverage during the 2003 Legislative Assembly.

PRESCRIPTION DRUG PRICES STUDY

Senate Concurrent Resolution No. 4027 directed a study of the prices of prescription drugs and possible mechanisms to lower costs to consumers and the state, and whether the state should establish a program to assist in the purchase of prescription drugs based upon income.

Prescription Drug Expenditures, Prices, and Utilization

Expenditures

Although comprising only a small percentage of total consumer spending (about 1 percent nationally, based on 1998 data), the committee learned the amount spent on prescription drugs has increased significantly in recent years, causing concern about the resulting impact on health care costs and the affordability of medications. From 1990 to 1998 the annual increase in prescription drug expenditures ranged from 8.6 to 15.4 percent. Spending on outpatient prescription drugs rose 18.8 percent from 1999 to 2000.

Prescription drug costs are still a relatively small percentage of total health care costs when compared to hospital care or physician services, but the percentage is increasing. From 1990 to 1998 hospital care and physician services decreased as a percentage of total health care costs from 41.7 to 37.6 percent and from 23.8 to 22.5 percent, respectively. During that same time period prescription drugs increased from 6.1 to 8.9 percent of total health care expenditures.

Prices

Drug expenditures are affected by changes in either prices paid for individual prescription drugs or prescription drug utilization. The committee learned that from 1991 to 1998 the average price per prescription increased from \$23.68 to \$37.38, an average annual increase of 6.7 percent compared to 2.6 percent for the consumer price index for all items and 4.6 percent for the consumer price index for medical care. A significant factor contributing to the increase in the average price per prescription is the purchase of new, more expensive drugs that are more effective than previous drugs or which provide treatment for diseases for which pharmaceutical treatments were not previously available. In 1998 the average price per prescription for new drugs (those introduced after 1992) was \$71.49, more than twice the average price of \$30.47 for older drugs (those introduced prior to 1992).

Consumer demand for new drugs results in part from advertising directed at consumers. The 10 most heavily advertised drugs in 1998 accounted for 22 percent of the total increase in drug spending from 1993 to 1998. Name brand drugs are more expensive than generic drugs, which are offered for sale by competing pharmaceutical firms after patent protection has expired on the name brand drug. In 1998 the average retail price of name brand drugs was \$54.78 compared to \$15.98 for generic drugs. A factor contributing to the high price of newly introduced drugs is the extensive period of research and development required to obtain Food and Drug Administration approval. Estimates of drug development time are as long as 15 years. United States pharmaceutical companies spent approximately \$21.1 billion on research and development in 1998, more than twice the amount spent in 1990, and 10 times the amount spent in 1980.

The committee reviewed prices for certain brand name drugs in the United States, Canada, and Mexico. The following table presents, for 10 of the top 25 drugs prescribed in North Dakota, the average price in the United States, Canada, and Mexico.

Prescription Brand Name	Average Price in United States	Average Price in Canada	Average Price in Mexico
Celebrex	\$77.15	\$33.75	\$36.00
Glucophage	\$64.15	\$14.00	\$30.00
Lipitor	\$229.93	\$164.00	\$108.00
Premarin	\$35.17	\$12.00	\$17.00
Prilosec	\$360.50	\$170.36	\$169.00
Prozac	\$105.64	\$43.00	\$50.00
Singulair	\$64.42	\$52.00	\$30.00
Wellbutrin	\$81.98	\$45.00	\$39.00
Zocor	\$101.82	\$60.00	\$48.00
Zolof	\$62.00	\$31.00	\$29.00

Utilization

Utilization also affects drug expenditures. As discussed, consumer advertising, the availability of new drugs, demographic changes, and other factors all contribute to increasing utilization of prescription drugs. From 1992 to 1998 the number of prescriptions purchased in the United States increased approximately 40 percent, from 1.9 billion to 2.6 billion, while the United States population increased only approximately 6 percent.

Insurance Coverage for Prescription Drugs

The Medicaid program is the largest source of public coverage for prescription drugs and is the primary source of payment for prescription drugs for low-income and disabled persons. In 1996 Medicaid provided prescription drug benefits to 11 percent of Americans. Medicare, the federal health insurance program for the elderly, does not provide coverage for most outpatient prescription drugs.

The committee learned the source of payment for prescription drugs has shifted over time from primarily out-of-pocket payments by the purchaser to primarily private insurance companies, as shown in the following schedule:

Year	Private Insurance	Out-of-Pocket Payments	Medicaid	All Other Sources
1965	3.5%	92.6%	0.0%	3.9%
1970	8.8%	82.4%	7.6%	1.2%
1975	12.2%	75.4%	10.8%	1.6%
1980	20.1%	66.0%	11.7%	2.2%
1985	29.9%	55.4%	11.8%	2.9%
1990	34.4%	48.3%	13.5%	3.8%
1995	46.8%	33.9%	15.8%	3.4%
1996	48.8%	31.6%	16.1%	3.5%
1997	50.8%	29.1%	16.5%	3.6%
1998	52.7%	26.6%	17.1%	3.6%

Medicaid Drug Expenditures in North Dakota

The committee learned that expenditures for Medicaid prescription drugs in North Dakota have increased significantly and are anticipated to continue to increase. Estimated expenditures for the 2001-03 biennium are 80 percent more than actual expenditures during the 1997-99 biennium, as shown in the following table:

Biennium	General Fund	Federal Funds	Other Funds	Total
1997-99	\$13,769,111	\$32,989,263	\$385,554	\$47,143,928
1999-2001	\$19,469,799	\$45,878,635		\$65,348,434
2001-03 (estimated expenditures)	\$20,853,533	\$58,778,695	\$5,297,948	\$84,930,176

Compared to 1997 the committee learned the 2002 weekly cost for prescription drugs in the Medicaid program has increased by 149 percent. Part of this increase is due to the percentage of generic drug usage in the Medicaid program decreasing from approximately 50 percent in 1997 to 45 percent in 2002.

The committee reviewed potential general fund Medicaid drug costs based on general fund Medicaid drug cost increases from 1991 to 1999 and demographic projections. The following schedule indicates the potential increases in general fund Medicaid drug costs if actual general fund costs continue to increase at the average rate of 36.65 percent per biennium from the 1991 to 1999 time period.

Biennium	Possible General Fund Medicaid Drug Costs
2003-05	\$36,356,389
2005-07	\$49,681,005
2007-09	\$67,889,094
2009-11	\$92,770,447
2011-13	\$126,770,816
2013-15	\$173,232,320

Drug Utilization Review Board

The committee learned that the state is required by federal law to maintain a Drug Utilization Review Board. The Drug Utilization Review Board consists of four physicians, four pharmacists, and three Department of Human Services employees. The board meets quarterly to provide recommendations to the Department of Human Services regarding Medicaid pharmacy services.

The committee learned the board's recent discussions have focused on Medicaid drug cost containment measures. The board has advised the department to screen Medicaid drug claims to ensure that medications are being used within medical guidelines. The Drug Utilization Review Board also identified a test class of medications to be used for physician education activities in an attempt to direct usage to the most cost-effective medications.

The committee learned the Drug Utilization Review Board supports the following actions that could be implemented to help slow the rate of increase of Medicaid drug expenditures:

1. Establish a state maximum allowable cost-pricing formula for certain drugs with generic equivalents.
2. Establish a preferred drug list.
3. Establish a prior authorization process and require copayments for brand name drugs for certain Medicaid enrollees.
4. Require prior authorization for use of out-of-state pharmacies.

5. Expand educational activities.

Cost Containment Strategies - Other States and Provinces

The committee reviewed the following information regarding prescription drug initiatives in other states:

1. A number of states have implemented or are in the process of implementing strategies to control prescription drugs costs primarily for the state Medicaid program but also for other health insurance programs. States are also developing initiatives to improve consumer access to lower-cost prescription drugs.
2. Strategies to lower prescription drug costs in Florida, Maine, Michigan, and Vermont include the development of preferred drug lists and negotiating supplemental rebates from prescription drug manufacturers.
3. Thirty-four states have implemented or are in the process of implementing initiatives to improve consumer access to lower-cost prescription drugs. Maine and Vermont offer programs to the elderly and disabled with incomes up to 400 percent of poverty and to others with incomes up to 300 percent of poverty who do not have prescription drug coverage or have inadequate prescription drug coverage.
4. A national legislative organization has been formed to assist states in addressing issues involving prescription drug costs. The effort began as a collaborative effort among the New England states but has recently expanded to be available to all states. The purpose is to share information among the states on strategies that are effective in controlling prescription drug prices and to enhance the development of state partnerships for purchasing prescription drugs.

The committee received information on pharmaceutical benefit management in British Columbia, Canada, from a representative of the Fraser Health Authority, who identified strategies that have been used to ensure cost-effective utilization of public funds. The committee learned British Columbia successfully implemented cost-control measures in 1994 to curb the growth in pharmaceutical expenditures. Cost-containment suggestions of the Canadian representative include:

1. A new drug review process that utilizes independent evidence-based analysis to guide decisions on the costs and effectiveness of new drugs.
2. A low-cost alternative drug program that limits coverage to the cost of the lowest-cost alternative drug with the same therapeutic benefits.
3. A limited drug use program that provides for appropriate drug use by approving a particular drug for first-line treatment of a disease. If a patient's condition is not successfully treated with a first-line agent, second-, third-, or fourth-line agents may be used.

4. A reference drug program that provides for a class of drugs to be used to treat a particular condition.

Pharmaceutical Assistance Programs - Other States

The committee reviewed other states pharmaceutical assistance programs, grouped into the following categories:

1. Price reduction programs that involve the state setting a limit on the prices charged for prescription drugs purchased by the state or by a segment of the population.
2. Purchasing cooperatives that involve an inter-state consortium of several states or an intra-state cooperative of state agencies or programs that consolidate pharmaceutical purchasing functions in order to obtain discounted prices and achieve administrative efficiencies.
3. Purchasing assistance programs that provide direct financial assistance to consumers for the purchase of prescription drugs.
4. Insurance programs that involve either a state-established program to provide insurance benefits for the purchase of prescription drugs or premium assistance to subsidize the cost of private prescription drug coverage.
5. Section 1115 waiver programs that require approval by the Centers for Medicare and Medicaid Services to allow a state to expand Medicaid services or eligibility levels and receive federal matching funds.
6. Tax credit programs that have the effect of reducing prescription drug costs through a state income tax credit for residents with high prescription drug costs.

Physician Prescribing Practices

The committee reviewed standards that dictate the prescribing practices of physicians and an American Medical Association report on increases in spending on prescription drugs in the United States. The committee received information from the North Dakota Medical Association and learned a physician focuses on the optimum treatment plan for each patient and is not always aware of the insurance status of the patient or the cost of pharmaceuticals used in the treatment. A physician prescribes a drug that based on the physician's judgment and clinical experience will most efficiently treat the patient's ailment. Physicians are guided by various ethical standards in the prescribing of medications. Ethical standards prohibit physicians from accepting gifts from the pharmaceutical industry in exchange for prescribing selected medications. Other ethical standards deal with direct-to-consumer advertisements of prescription drugs. Ethical standards dictate that physicians should deny patient requests for inappropriate prescriptions, and educate patients as to why certain advertised drugs may not be suitable treatment options.

Pharmaceutical Research and Manufacturers

The committee heard testimony from representatives of the Pharmaceutical Research and Manufacturers of America regarding the committee's study of prescription drugs, including the following comments:

1. Efforts to reduce pharmaceutical costs may negatively impact other areas of health care.
2. Legislators should consider the impact on patient access and choice when considering prescription drug management plans.
3. Even though newer medications cost more per prescription, they may lower overall health care costs due to fewer side effects, better patient compliance, and increased effectiveness.
4. Pharmaceutical manufacturers spend nearly 20 percent of revenue for research and development.
5. Drug manufacturers spend millions of dollars in research and development in clinical trials before a drug can be brought to market. Once brought to market, a drug's profitability is limited due to a short patent life and competition from other drugs.
6. Direct-to-consumer advertising leads to more educated consumers, allowing patients to make more informed decisions.
7. Quality of life issues need to be considered when examining drug cost control measures that may limit the availability of the most appropriate drug for a particular patient.
8. Reference-based pricing programs should be opposed because they involve grouping all similar drugs into one class even though all drugs in a particular class are not the same.

Blue Cross Blue Shield Information

The committee received testimony from representatives of Blue Cross Blue Shield of North Dakota, including the following observations:

1. Several factors contribute to increased health insurance premiums, including increasing utilization of services, increasing service costs, and increasing prescription drug costs. Monthly payments for prescription drugs increased from \$10.88 per member in 1997 to \$18.76 per member in 2001.
2. Blue Cross Blue Shield does not offer a limited coverage health plan because the company already offers a basic plan, and there has been very little consumer interest in limited coverage plans.
3. Member monthly drug costs for 2001 were 13 percent higher than in 2000 and 23 percent higher than in 1999.
4. The 30 major diagnostic categories paid for by Blue Cross Blue Shield of North Dakota for 2000 resulted in total charges of \$156,628,448, relating to 19,548 cases for an average charge of \$8,013 per case.

Other Information and Testimony

The committee reviewed the average Medicaid expenditures for the 20 most common diagnostic-related groups in North Dakota, Minnesota, South Dakota, and Montana and the average Medicaid expenditures for the 10 most common diagnostic-related groups in the four states.

The committee reviewed North Dakota demographic information and learned that for the period 1991 to 2015 the North Dakota population is anticipated to increase by 2.45 percent; however, older age groups are anticipated to increase at a much higher rate.

Recommendations

The committee made no recommendations as a result of its study of prescription drug prices.

COORDINATION OF HEALTHY STEPS AND MEDICAID PROGRAMS STUDY

Section 3 of House Bill No. 1441 directed a study of the coordination of the medical assistance and children's health insurance programs, including the Department of Human Services development of a single application form for both programs, whether the children's health insurance program should be administered by the state or the counties, the effects of eliminating the asset eligibility requirement for the medical assistance program, the standardization of the definition of "income" for all programs administered by the Department of Human Services, and the feasibility and desirability of seeking a federal waiver to allow the children's health insurance program to provide coverage for a family through an employer-based insurance policy if an employer-based insurance policy is more cost-effective than the traditional plan coverage for the children.

North Dakota Century Code Section 50-29-02 provides that the Legislative Council is to receive an annual report from the Department of Human Services on the children's health insurance program state plan, including enrollment statistics and costs.

Healthy Steps Program

North Dakota's children's health insurance program, named Healthy Steps, was authorized by the 1999 Legislative Assembly to provide health insurance coverage to low-income children not eligible for Medicaid. The income eligibility limit for Healthy Steps is set at family net income at or below 140 percent of the federal poverty level. The children's income eligibility limit for Medicaid is 100 percent of the federal poverty level.

The Department of Human Services contracted with Blue Cross Blue Shield of North Dakota to provide the health insurance coverage for the Healthy Steps program. The first contract covered the period October 1, 1999, through June 30, 2001. Insurance coverage is based on the state employee group health insurance plan, with added coverage for dental and vision services. For the 1999-2001 biennium the premium rate for most policies was \$108.60 per member

per month with copayments of \$2 for each prescription, \$50 for each hospital admission, and \$5 for each emergency hospital visit. Copayment requirements are waived for American Indian children, and the premium paid by the state for those policies is \$109.56.

The contract for the period July 1, 2001, through June 30, 2003, has a premium rate of \$126.40 per month, while the premium for policies without copayments is \$127.50 per month.

The federal matching assistance percentage (FMAP) for the Healthy Steps program and federal funds allocated to North Dakota for the program are:

Federal Fiscal Year	Healthy Steps FMAP	Federal Allocation for Health Steps
1998	79.30%	\$5,040,741
1999	78.96%	\$5,016,935
2000	79.29%	\$5,655,883
2001	78.99%	\$6,575,656
2002	78.91%	\$5,332,879

The committee received the 2001 annual report regarding enrollment statistics and costs for the Healthy Steps program. The committee learned for federal fiscal year 2001 a total of 3,197 children were enrolled in Healthy Steps. The number of children enrolled in Healthy Steps as of October 1, 2001, was 2,560, which is 65 percent of the estimated number of eligible children based on the 1998 Robert Wood Johnson Foundation survey of uninsured children. For federal fiscal year 2001 the department spent a total of \$3,173,901 for premium payments to Blue Cross Blue Shield of North Dakota for the program.

The Department of Human Services filed the 2002 annual report with the Legislative Council on October 28, 2002. For federal fiscal year 2002 a total of 3,571 children were in Healthy Steps at some time during the year. The number of children enrolled on October 1, 2002, was 2,282, which is 63 percent of the estimated number of eligible children based on the 1998 Robert Wood Johnson Foundation survey. For federal fiscal year 2002 the department spent a total of \$3,774,425 for premium payments to Blue Cross Blue Shield of North Dakota for the program.

Single Application Form

The committee reviewed the development of a single application form for the Healthy Steps and medical assistance (Medicaid) programs. House Bill No. 1441 directed the Department of Human Services to provide medical benefits to children and families coverage groups and to pregnant women without consideration of assets if the federal agency approves amendments to the state CHIP plan.

Previously, eligibility for the Healthy Steps program did not include an asset test while eligibility for Medicaid did. If a family applies for Medicaid and is ineligible, the family would need to complete a separate application for Healthy Steps. If a family completes a Healthy Steps application and it appears the children are Medicaid-eligible, the family must complete a separate Medicaid application.

Based on a January 2001 report by the National Conference of State Legislatures, 38 states provide CHIP coverage to children at or above 200 percent of the federal poverty level. Of those 38 states, 35 states use a joint application form for Medicaid and CHIP, and 36 have eliminated the asset test for those programs.

The committee learned that all necessary amendments to the Healthy Steps program and the Medicaid program were approved by the Centers for Medicare and Medicaid Services (CMS) and that the department began using a combined application form on May 1, 2002. The new form is shorter and does not require individuals who are determined ineligible for one of the programs to complete a separate application form for consideration under the other program as was necessary previously.

County Administration of Healthy Steps

The committee considered whether the Healthy Steps program should be administered by the state or by the counties. The Department of Human Services determines eligibility for the Healthy Steps program while counties determine eligibility for Medicaid.

The committee learned the Department of Human Services administers the Healthy Steps program for two primary reasons:

1. Limit administrative costs - Pursuant to federal regulations, administrative costs for the Healthy Steps program may not exceed 10 percent of program costs. During the 1999 Legislative Assembly counties did not provide specific information regarding county costs for determining eligibility. Because the cost of county eligibility determination was not known, the department was concerned that adequate administrative funding would not be available for outreach activity necessary to launch the new program.
2. Client anonymity - The department wanted to determine if a separate state-operated eligibility determination process would meet the needs of working families and maintain client anonymity by allowing families to contact an insurer rather than a welfare agency.

The committee learned the Department of Human Services implemented the program without any additional staff and has operated the program for almost two and one-half years. The cost of determining program eligibility is approximately \$89,000 for the 2001-03 biennium. The department believes its administration of the Healthy Steps program has worked well but the lack of staff has delayed the department's review of client renewals.

The committee reviewed other states' methods of administering children's health insurance programs. The committee learned that in all states, some administrative functions for the program are performed at the state agency level. Administrative functions include distributing applications, determining eligibility, calculating bills and cost-sharing, and gathering and analyzing data. In addition to the administrative functions performed at the state agency level, one state uses local social service

agencies to determine eligibility, and eight states use a third party such as a nonprofit entity to perform eligibility or other administrative functions.

The committee received information from the North Dakota County Social Service Directors Association regarding county administration of the Healthy Steps program. The committee learned the association believes because most county social service agencies already deal with many low-income families, it is logical and appropriate for the Healthy Steps program to be administered at the county level. By incorporating the Healthy Steps program into the range of other low-income benefit programs administered at the county level, children are more likely to be enrolled in a health care program. Counties may be willing to contribute to the required local administrative funding match if allowed to access the federal administrative reimbursement for the Healthy Steps program. The association believes if the Legislative Assembly decides counties should administer the Healthy Steps program, a 12-month transition plan should be provided. Counties could be reimbursed either through a flat rate or reimbursed based on the random moment time study, which allocates staff time to various programs.

The association believes some small rural counties with few clients may have adequate staff to assume administration of the Healthy Steps program; however, larger counties with more clients may need to add staff to administer the Healthy Steps program. The association did not develop a specific cost estimate for county administration of the Healthy Steps program.

Effects of Eliminating Asset Test for Medicaid

The committee reviewed the effects of eliminating the asset test for determining Medicaid eligibility. House Bill No. 1441 directed the Department of Human Services to provide Medicaid benefits to children and families coverage groups and to pregnant women without consideration of assets if federal approval is obtained.

The committee learned the department submitted two separate state plan amendments relating to the elimination of the asset test for Medicaid eligibility and for the development of a combined application form for Medicaid and Healthy Steps. Both amendments were approved. The state CHIP amendment allowed the state to continue to claim the enhanced CHIP matching rate for qualifying children who are transferred from the Healthy Steps program to the Medicaid program. The state Medicaid plan amendment eliminated the asset test for children and family eligibility groups. Both plan amendments were effective January 1, 2002.

The committee learned the department originally estimated that approximately 960 children would transfer from Healthy Steps to Medicaid during calendar year 2002 as a result of eliminating the asset test, and that another 700 adults and children would become eligible for Medicaid as a result of eliminating the asset test.

The committee learned that as of the end of August 2002, 699 children and 381 adults had become eligible for Medicaid due to the elimination of the asset test for

children and families aid categories. Of the 699 children, 145 currently have some other health insurance coverage, and 554 children would have been eligible for the Healthy Steps program if the asset test had not been eliminated. Contrary to projections, the department has not experienced a decline in Healthy Steps enrollment.

Standardization of Income Definition

The committee reviewed the standardization of the definition of income for programs administered by the Department of Human Services.

Healthy Steps

Income eligibility for the Healthy Steps program is based on net income at or below 140 percent of the federal poverty level. Net income is determined by subtracting child care costs and payroll taxes from gross income. Net income limits in effect as of March 31, 2002, are shown in the following schedule:

Number of People in Family	Maximum Allowable Monthly Net Income
1	\$1,003
2	\$1,355
3	\$1,707
4	\$2,060
5	\$2,412
6	\$2,764
7	\$3,117
8	\$3,469
9	\$3,821
10	\$4,174

Medicaid

Establishing eligibility for Medicaid is a more complicated process.

Nursing homes - The determination of income for an individual who requires nursing care services and who is residing in a nursing facility is calculated by excluding various types of income, including occasional small gifts, Veterans Administration pensions, and certain federal compensation; deducting various items, including mandatory payroll deductions for Social Security and Medicare, nursing care income level (\$50 per month), amounts provided to a family member for maintenance needs, medical expenses, Medicare and health insurance premiums, long-term care insurance premiums, a portion of payments made for services of a guardian or conservator; and adding payments from any source received as a result of medical expenses or increased medical need.

Other services - Income eligibility for an individual residing in an individual's own home or in a specialized facility is calculated by excluding various types of income, including payments made by the department or a county under another assistance program, child support of \$50 per month, income earned by a child who is a full-time student, occasional small gifts, income received as a result of participation in the Job Corps program, loan proceeds, income tax refunds, training allowances of up to \$30 per week, and certain federal compensation; deducting health insurance premiums, medical expenses, food and veterinary expenses for a

dog trained to detect seizures, long-term care insurance premiums, a portion of remedial care costs for an individual residing in a specialized facility, certain transportation expenses, court-ordered child and spousal support payments, certain child or adult dependent care expenses, any income of \$20 per month, a portion of payments made for guardian or conservator services, and a work or training allowance of \$30 per month; and also deducting from earned income for all individuals except aged, blind, or disabled applicants, mandatory payroll deductions and union dues, or \$90, whichever is greater, and mandatory retirement plan deductions, and from earned income for aged, blind, or disabled applicants, \$65 plus one-half of the remaining monthly gross earned income.

Once the level of income is established, eligibility must be determined. Income eligibility levels are different for each type of recipient--the categorically needy, the medically needy, and poverty income individuals.

The categorically needy consists of two categories of individuals:

1. Those who were eligible for aid to families with dependent children (AFDC) (before the AFDC program was replaced by the temporary assistance for needy families (TANF) program), for whom eligibility for Medicaid is a result of meeting AFDC eligibility requirements.
2. The aged, blind, and disabled recipients for whom eligibility for Medicaid is based on the income level that establishes supplemental security income.

Medically needy individuals receiving nursing care are subject to an income limit of \$50 per month, after the adjustments indicated above. Medically needy individuals residing in their own homes are subject to the following income limits:

Number of People in Family	Maximum Allowable Monthly Income
1	\$369
2	\$428
3	\$465
4	\$556
5	\$625
6	\$684
7	\$721
8	\$760
9	\$783
10	\$810

Poverty income level eligibility is based on the following categories of eligibility:

Eligibility Category	Maximum Income as a Percent of Federal Poverty Level
Pregnant women and children under age 6	133%
Qualified Medicare beneficiaries	100%
Children aged 6 to 18	100%
Extended Medicaid benefits	185%
Qualified disabled and working individuals	200%
Special low-income Medicare beneficiaries	110%

Other Programs

Other programs considered include child care assistance, low-income heating assistance, and the TANF

program. The committee learned federal regulations affect the definition of income in these programs making it difficult to standardize income without waivers from program requirements. The committee also reviewed other states' Medicaid and CHIP income eligibility guidelines.

Healthy Steps Eligibility Changes

The committee received information on Department of Human Services cost estimates of increasing the eligibility limits for the Healthy Steps program to various levels up to 200 percent of the federal poverty level based on net income:

Net Income Eligibility Level as a Percentage of the Federal Poverty Level	Estimated 2003-05 General Fund Cost	Estimated 2003-05 Federal Funds Cost	Estimated 2003-05 Total Cost
150%	\$135,000	\$471,000	\$606,000
175%	\$536,000	\$1,864,000	\$2,400,000
200%	\$1,100,000	\$3,900,000	\$5,000,000

The committee also received information on the Department of Human Services cost estimates for increasing the income eligibility limit for the Healthy Steps program to various levels up to 200 percent of the federal poverty level based on gross rather than net income:

Gross Income Eligibility Level as a Percentage of the Federal Poverty Level	Estimated 2003-05 General Fund Cost	Estimated 2003-05 Federal Funds Cost	Estimated 2003-05 Total Cost
165%	\$19,246	\$67,643	\$86,889
175%	\$178,596	\$627,707	\$806,303
185%	\$320,723	\$1,127,236	\$1,447,959
200%	\$679,253	\$2,387,351	\$3,066,604

Expansion of Healthy Steps to Include Subsidies for Adding Family Coverage to Employer-Based Health Insurance Plans

The committee studied the feasibility and desirability of expanding the Healthy Steps program to provide family coverage through employer-based health insurance plans. The committee reviewed federal guidelines under which states may use CHIP funds to provide health insurance coverage through employer-sponsored group health plans. States that use CHIP funds to subsidize employer-sponsored group health plans are required to:

1. Impose a 6- to 12-month waiting period. Newborns are not subject to the waiting period.
2. Require employers to contribute at least 60 percent of the cost of the family coverage premium.
3. Limit the state's payment to the same amount that would have been paid through the state's CHIP plan.
4. Require families to apply for the full premium contribution available from the employer.
5. Evaluate the program.

The committee reviewed other states' actions involving premium assistance programs. The committee learned that several states, including Massachusetts, New Jersey, Rhode Island, and Wisconsin, have used Section 1115 demonstration Medicaid waivers to provide adult and family coverage through a premium assistance program for employer-sponsored insurance.

The committee reviewed North Dakota unemployment rates. The committee learned the unemployment rate in North Dakota is projected to change from 2.5 percent in 2001 to 3.3 percent in 2002, 3.1 percent in 2003, 3 percent in 2004, and 3 percent in 2005. Preliminary data included in a Job Service North Dakota employer survey indicated that 86.3 percent of employers responding offer health insurance coverage to employees. The committee learned that based on a 2001 survey, 73.5 percent of full-time employees and 22.1 percent of part-time employees had health plan coverage through their employers.

The committee learned in order to expand the Healthy Steps program by adding family health coverage through employer-sponsored insurance, the department would need to make a benchmark equivalency test. Such a test requires that benefits provided by an employer-sponsored plan meet or exceed a benchmark plan. A cost-effectiveness test must also be met to ensure that the subsidy paid to employers is not greater than what the state would have paid to enroll the children in the Healthy Steps program. Several states have implemented this type of program, but due to the complicated nature of the administrative requirements have experienced only minimal success.

The committee received information from the Department of Human Services suggesting that pursuing a Section 1115 Medicaid demonstration waiver rather than expanding the Healthy Steps program may be advisable to reduce administrative costs if the Legislative Assembly is interested in providing family health insurance coverage through employer-sponsored insurance.

Other Information and Testimony

The committee received information regarding a \$908,000 federal community access program grant received by the Northland Health Care Alliance to support the coordination of services for underinsured and uninsured North Dakotans.

The committee learned the Department of Human Services believes children are not denied medical care because of a lack of insurance or ability to pay. If a child arrives at an emergency room, the child will receive care even if the health care provider will likely not receive compensation.

The committee received information on uncompensated care provided by North Dakota health care providers. Physicians commonly forgive or waive copayments to facilitate patient access to needed medical care; however, insurer policy restrictions may limit the physician's ability to make such accommodations. Hospital admissions have remained fairly constant from 1996 to 2000, while emergency room and outpatient visits have

increased by approximately 10 percent. Hospital total gross revenue has increased approximately 42 percent from 1996 to 2000, while allowances, bad debts, and charity care have increased 112 percent.

The committee reviewed health insurance programs for children. The committee learned that North Dakota children not covered by private health insurance may be eligible for medical coverage through the following programs:

1. Medicaid - Provides coverage for various groups, including children through age 18 with net family income up to 100 percent of the federal poverty level. As of November 2001, 20,829 children were enrolled in the Medicaid program.
2. Healthy Steps - Provides coverage for children through age 18 who have net family income up to 140 percent of the federal poverty level. As of November 2001, 2,615 North Dakota children were enrolled in the Healthy Steps program.
3. Caring Program - Provides primary and preventive health care for uninsured children through age 18 with gross family income from 141 to 200 percent of the federal poverty level. As of November 2001, 539 children were enrolled in the Caring Program.

The committee received information from an American Academy of Pediatrics report indicating for 2000, an estimated 20 percent of uninsured children nationwide are eligible for the state CHIP and 52 percent are eligible for state Medicaid programs. The report estimates that in North Dakota, 14 percent of uninsured children are eligible for CHIP, and 59 percent are eligible for Medicaid.

The committee reviewed methods used in several midwestern states to estimate the number of uninsured children. The committee learned most states do not have a state-specific survey such as the 1998 Robert Wood Johnson Foundation family survey conducted in North Dakota to provide information on the number of uninsured children. Consequently most states use data from the Census Bureau's current population survey. The current population survey data indicates that nationally 37.1 percent of children under age 19 have family incomes at or below 200 percent of the federal poverty level and 7.3 percent of children under age 19 have no health insurance. The current population survey indicates that in North Dakota, 37.6 percent of children under age 19 have family incomes at or below 200 percent of the federal poverty level and 8.4 percent of children under age 19 do not have health insurance.

Conclusion

The committee makes no recommendation as a result of its study of the coordination of the Healthy Steps and Medicaid programs.

COORDINATION OF BENEFITS FOR CHILDREN WITH SPECIAL NEEDS STUDY

Section 1 of Senate Bill No. 2330 directed a Legislative Council study of the coordination of benefits for children with special needs under age 21 among the Department of Public Instruction, the Department of Human Services, and private insurance companies with the purpose of optimizing and coordinating resources and expanding services, including augmentative communication devices and therapy services.

Statutes Providing for Coordination of Services

The committee reviewed the following North Dakota Century Code sections of law:

Section 15.1-32-02 - Coordination of special education policies and programs. This section directs the Superintendent of Public Instruction to establish general state policy regarding special education and endeavor to ensure a cooperative special education program coordinating all available services. The Superintendent is required to cooperate with private agencies and solicit their advice and cooperation in the establishment of policy and in the coordination and development of special education programs.

Section 15.1-32-03 - Interagency cooperative agreements - Development and implementation. This section directs the Superintendent of Public Instruction to develop and implement interagency agreements with the Department of Corrections and Rehabilitation, the Department of Human Services, the State Department of Health, and other public and private entities to maximize the state resources available for fulfilling educationally related service requirements.

Section 15.1-32-05 - Special education - Cooperation among agencies. This section requires the Superintendent of Public Instruction, the State Department of Health, and the Department of Human Services to cooperate in planning and coordinating early intervention programs for individuals under age 3.

Section 15.1-32-13 - Related services - Insurance options - School district responsibility. This section provides that each school district is to require that all family insurance options be exhausted in paying the costs of determining a student's medically related disability and in paying for the provision of related services to the student, provided there is no financial loss to the student or the student's parent. The school district is responsible for all costs not covered by the family's insurance.

Section 50-06-01.4 - Structure of the department. This section requires the executive director of the Department of Human Services to consult with and maintain a close-working relationship with:

- The State Department of Health.
- The Department of Corrections and Rehabilitation, the School for the Blind, and the School for the Deaf to develop programs for developmentally disabled persons.
- The Department of Public Instruction to maximize the use of resource persons in regional human

service centers in the provision of special education services.

Definitions

The committee reviewed the definitions of various terms used in special education, including:

1. Assistive technology device - Any equipment or product used to increase, maintain, or improve functional capabilities of a child with a disability.
2. Assistive technology service - Any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device.
3. Augmentative communication - A means of communication other than natural speech.

State Programs

The committee learned the Medicaid program covers approximately 21,300 children; the Healthy Steps program covers approximately 2,500 children; and the children's special health services program covers approximately 400 children. The Medicaid program pays for rehabilitative, physical, occupational, and speech therapy; some maintenance services; and augmentative communication devices in certain cases. The Healthy Steps program is not permitted to pay for maintenance therapy or augmentative communication devices. The children's special health services program provides physical, occupational, and speech therapy services for eligible children if other payment sources are not available; however, the program does not cover augmentative communication devices. As of December 1, 2000, there were 13,650 North Dakota children with disabilities receiving special education and related services. These children represent 11.5 percent of the total student enrollment in North Dakota.

Cooperative Agreements

Pursuant to NDCC Section 15.1-32-03, the Department of Public Instruction has entered into cooperative agreements with various state agencies, including:

1. Cooperative agreement between the Department of Human Services and the Department of Public Instruction - Entered into on April 23, 2001, the purpose of this agreement is to establish more clearly the relationships among the party agencies through agreement on the coordination of roles, designation of liaison representatives, planning for joint staff training and conferences, evaluation of working relationships, and identification and definition of services for which claims may be made for reimbursement under state and federally funded programs.
2. Cooperation and collaboration in providing services to students with disabilities aged 14 to 21 - The agencies involved are the Department of Human Services, the Department of Public Instruction, Job Service North Dakota, and the

State Board for Vocational and Technical Education. The areas of cooperation are:

- a. Communication.
- b. Outreach and referral.
- c. Evaluation.
- d. Individual program planning.
- e. Transition.
- f. Family involvement.
- g. Professional development.
- h. Shared resources.
- i. Fiscal and administrative considerations.
- j. Service to students within natural or least-restrictive environments.
- k. Confidentiality of information.
- l. Technical assistance and training.

The committee learned the Department of Human Services has entered into six cooperative agreements with other agencies relating to the coordination of benefits and services for children with special needs.

Blue Cross Blue Shield Task Force

In January 2001 Blue Cross Blue Shield of North Dakota formed a task force to evaluate benefits for children with special needs and to improve collaboration among parents, providers, and insurers regarding the care of children with special needs. The task force consisted of representatives of the Department of Public Instruction, the Department of Human Services, and Blue Cross Blue Shield of North Dakota; physical, occupational, and speech therapists; and parents of children with special needs.

The committee learned the task force focused on the following four areas:

1. The review process used by Blue Cross Blue Shield of North Dakota and the medical documentation required for the continuation of therapy and other benefits for children with special needs.
2. The definition of "medical services," "educational services," and "maintenance care" to determine what services are the responsibility of the school district and what services are the responsibility of Blue Cross Blue Shield of North Dakota.
3. The types of therapy and other benefits that should be covered by insurance.
4. The improvement of communication and collaboration between all parties involved in the delivery of services to children with special needs.

The committee learned the work of the task force resulted in two changes to benefits offered by Blue Cross Blue Shield of North Dakota:

1. The addition of a habilitative therapy benefit. The habilitative therapy benefit implemented by Blue Cross Blue Shield of North Dakota will allow for 90 visits per benefit period per discipline. Blue Cross Blue Shield requires that an individual medical plan be submitted every six months to provide a report on a patient's

progress and the short-term and long-term habilitative goals.

2. The removal of the benefit exclusion for augmentative communication devices. A new task force was formed to evaluate current mechanisms and to develop a collaborative process for the purchase and lending of augmentative communication devices.

One unresolved issue identified by the task force is the legality of sharing information between private therapists, school therapists, and third-party payers.

A second task force organized by Blue Cross Blue Shield of North Dakota conducted a series of meetings with parents, therapists, providers, public school staff, Department of Human Services Medicaid staff, and Blue Cross Blue Shield of North Dakota staff. The task force explored issues relating to benefits for augmentative communication devices and other services provided to children with special needs. The goal of the task force was to understand the respective roles of insurance carriers, parents, schools, and government programs relating to the purchase of augmentative communication devices. The task force did not identify the need for any specific legislation resulting from its study.

Other Testimony

The committee received testimony from other interested persons, including a parent of a child who uses an augmentative communication device. Testimony indicated that better coordination is needed between schools and health care providers in the purchase of augmentative communication devices because these devices are medically necessary in many cases.

Conclusion

The committee does not make any recommendation regarding its study of the coordination of benefits for children with special needs.

STATE BOARD OF NURSING REPORT

House Bill No. 1360, which is effective through September 30, 2006, provides that the Legislative Council receive annual reports from the State Board of Nursing on its study, if conducted, of the nursing educational requirements and the nursing shortage in this state and the implications for rural communities.

The committee received the annual report from the State Board of Nursing and learned that the Board of Nursing contracted with the University of North Dakota Center for Rural Health to conduct a nursing workforce study at a cost of \$110,000. The study is to address the issues of supply and demand for nurses as well as issues of recruitment, retention, and utilization of nurses. The board anticipates the study to be completed in 2004. The cost of the study is being paid for by increases in renewal, endorsement, and license examination fees of \$20 per two-year period beginning July 1, 2002. The committee learned the Board of Nursing also applied for grant funding from many organizations but has not yet

been successful in obtaining grant funding for the project.

The committee learned the North Dakota registered nurse workforce is aging, North Dakota is experiencing a shortage of specialty nurses, and nurses are inequitably distributed across the state. Once the workforce project is complete, future studies may involve:

1. Periodic sampling of nurses to obtain trend data.
2. Surveys of male and minority interest in nursing.
3. Surveys and focus groups of part-time nurses.

The workforce study project began in June 2002 and has involved management surveys of hospitals, long-term care facilities, and clinics. Surveys will also be sent to public health units, home health care providers, and individual nurses. The response rate of the initial management survey of hospitals and long-term care facilities was 54 percent for hospitals and 38 percent for long-term care facilities. A second survey has been sent to those not responding to the first survey. Committee members expressed concern regarding the low percentage of survey responses from hospital and long-term care facilities and suggested that in order for the study to be useful, responses are needed from all facilities. Preliminary conclusions based on initial survey results include:

1. Thirty-three percent of semirural and rural hospitals and 25 percent of long-term care facilities have difficulty recruiting registered nurses.
2. Registered nurses and licensed practical nurses resign their positions for other nursing positions, relocation, or higher salaries.
3. Urban hospitals report the highest cost to deliver care due to registered nurse vacancies while semirural hospitals report the highest cost to deliver care as a result of licensed practical nurse vacancies.
4. Urban hospitals report the highest patient loads due to registered nurse vacancies while semirural hospitals report the highest patient loads due to licensed practical nurse vacancies.

MOTOR VEHICLE INSURANCE INDEPENDENT MEDICAL EXAMINATION REPORT

Senate Bill No. 2288 provided that the Legislative Council, prior to November 1, 2002, receive a report from the Insurance Commissioner regarding motor vehicle insurance independent medical examinations.

The committee received the Insurance Department's report and learned that insurance companies may hire physicians to conduct an independent medical examination to determine whether an individual who has been

injured in an automobile accident is healed or requires further treatment. The issue of these examinations is to ensure that the examinations are unbiased and impartial. While North Dakota has two reviews--the treating physician and the independent medical examination physician--the committee learned that some states have implemented a third review which is a form of no fault alternative dispute mechanism, including arbitration, mediation, informal conciliation, or review panels.

The committee received information on the Insurance Department's personal injury protection/no fault closed claims study. The committee learned the 2001-02 study was conducted with the cooperation of the top 25 automobile insurance writers in the state, which involves 82 percent of the market. Of the 4,371 total closed claims during the August 2001 to August 2002 time period, 148 resulted in an independent medical examination and 54 in an independent records review. Based on the information reviewed, the department developed the following conclusions:

1. Of all the claims involving benefits being paid, relatively few require an independent medical examination to be performed.
2. For those claims in which an independent medical examination was performed, the majority result in the termination of benefits.
3. Because of insufficient claims volume, the department is unable to make any credible observation regarding the average cost for providers of independent medical examinations.
4. Independent medical examinations and independent records reviews were performed more frequently in state than out of state.
5. The frequency in which an independent medical examination was requested when the primary medical provider was a chiropractor is equal to the frequency in which the primary medical provider was a physician.
6. Independent medical examinations and independent records reviews were requested more frequently on those claims in which a previous similar injury existed.

Conclusion

The Insurance Department did not make any recommendations as a result of its study; however, the department did suggest that if the Legislative Assembly chooses to make a change in this area, it may wish to authorize an alternative dispute mechanism rather than the formal legal process, especially for smaller claims. The committee does not make any recommendation in this area.

BUDGET COMMITTEE ON HUMAN SERVICES

The Budget Committee on Human Services was assigned responsibilities in six areas. Section 29 of House Bill No. 1196 directed a study of long-term care needs and the nursing facility payment system in North Dakota. Section 18 of House Bill No. 1012 directed a study of the senior citizen mill levy matching grant program. Section 1 of Senate Bill No. 2354 directed a study of the feasibility and desirability of establishing an alternatives-to-abortion services program that would provide information, counseling, and support services to assist women to choose childbirth and to make informed decisions regarding the choice of adopting or parenting. Senate Concurrent Resolution No. 4034 directed a study of the issues and concerns of implementing Charitable Choice, the privatization of federally funded welfare services through faith-based organizations.

North Dakota Century Code (NDCC) Section 50-09-29 provides that the Legislative Council approve revised administration of the temporary assistance for needy families (TANF) program by the Department of Human Services. Section 1 of Senate Bill No. 2307 provides that the Legislative Council receive quarterly reports from the Department of Human Services regarding the development of a recommendation, with developmental disabilities services providers, for a new statewide developmental disabilities services provider reimbursement system. These responsibilities were assigned to the committee.

Committee members were Representatives Amy Warnke (Chairman), Audrey B. Cleary, Jeff Delzer, Pat Galvin, Bob Hunsakor, James Kerzman, Ralph Metcalf, Chet Pollert, Todd Porter, Clara Sue Price, Dale C. Severson, Ken Svedjan, and Wayne W. Tieman and Senators Robert S. Erbele, Thomas Fischer, Kenneth Kroepflin, Judy Lee, and Michael Polovitz.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2002. The Council accepted the report for submission to the 58th Legislative Assembly.

LONG-TERM CARE STUDY

Section 29 of House Bill No. 1196 directed a study of the long-term care needs and nursing facility payment system in North Dakota.

Long-Term Care Funding

The committee reviewed funding for basic care assistance and nursing facility care under the medical assistance program as shown on the following schedules:

Source of Funds	Basic Care Assistance Funding		
	1997-99 Actual	1999-2001 Actual	2001-03 Legislative Appropriation
General fund	\$3,925,598		\$382,080
Health care trust fund			
County funds	362,869		
Federal Medicaid funds			6,081,186
Retained funds	1,319,527	\$5,948,118	2,400,992
Total	\$5,607,994	\$5,948,118	\$8,864,258

Source of Funds	Nursing Facility Medical Assistance Funding		
	1997-99 Actual	1999-2001 Actual	2001-03 Legislative Appropriation
General fund	\$65,277,854	\$71,288,558	\$80,957,699
Health care trust fund			9,137,300
County funds	1,848,532		
Federal Medicaid funds	156,620,497	167,917,678	209,144,950
Total	\$223,746,883	\$239,206,236	\$299,239,949

The following schedule details 2001-03 biennium funding initiatives relating to long-term care approved by the 2001 Legislative Assembly in House Bill No. 1196:

Description	Health Care Trust Fund	Federal Funds	Total
Nursing home bed reduction incentive - The department may pay incentives of up to: \$15,000 per bed if a facility eliminates its entire licensed bed capacity \$12,000 per bed if a facility reduces at least eight beds \$8,000 per bed if a facility reduces fewer than eight beds	\$4,000,000		\$4,000,000
Nursing facility employee salary and benefit enhancements	8,189,054	\$19,107,793	27,296,847
Nursing facility rate limit increase due to rebasing to 1999	681,846	1,590,974	2,272,820
Nursing facility personal care allowance increase by \$10 per month, from \$40 to \$50 per month	266,400	621,600	888,000
Basic care employee salary and benefit enhancements	202,080	471,520	673,600
Basic care personal care allowance increase by \$15 per month, from \$45 to \$60 per month	180,000		180,000
Long-term care nursing scholarship and loan repayment program ¹	489,500		489,500
Total	\$14,008,880	\$21,791,887	\$35,800,767

¹ A long-term care nursing scholarship and loan repayment program was established in the State Department of Health for providing grants of up to \$5,500 to each eligible nursing facility during the first year of the biennium for the facility to use for providing scholarships to nursing staff or others to obtain a nursing education or for assisting nurses employed by the facility to repay their nursing student loans. Each nursing facility must provide an equal amount as matching. If appropriation authority remains after the first year of the biennium, the State Health Council may provide additional matching grants to nursing facilities for the same purpose.

At each meeting, the committee received information from the Department of Human Services on the status of long-term care expenditures for the basic care and medical assistance programs. As of October 2002 the committee learned the department anticipated basic care expenditures to exceed the budgeted amount by \$300,000 due to a 1.51 percent reduction in the federal Medicaid matching rate for federal fiscal year 2003 and expenditures for room and board being more than anticipated. As of October 2002 the committee learned the department projected general fund expenditures for nursing facility care to exceed budgeted amounts by \$1.9 million primarily due to the reduction in federal Medicaid matching for federal fiscal year 2003 and an \$850,000 general fund reduction resulting from the Governor's July 2002 budget allotment.

Health Care Trust Fund

The health care trust fund is the special fund into which money generated from the intergovernmental transfer program is deposited. The intergovernmental transfer program allows the state to claim additional federal Medicaid funds by making government nursing facility funding pool payments to government nursing facilities in the state--Dunseith and McVile. These facilities return the funding to the state, less a \$50,000 transaction fee, and the federal funds are deposited in the health care trust fund. Money is spent from the fund pursuant to legislative appropriations. The health care trust fund June 30, 2003, balance is projected to be \$41.4 million.

Nursing Facility Payment System

The committee reviewed North Dakota's nursing facility payment system. North Dakota's nursing facility payment system has been in place since 1990 and requires equalized rates, which means nursing facilities may not charge private pay residents a higher rate than individuals whose care is paid for by the Medicaid program. Nursing facilities are, however, allowed to charge higher rates for private occupancy rooms.

The North Dakota nursing facility payment system consists of 34 resident classifications. Classifications are based on the resident assessment instrument (MDS-minimum data set) required in all nursing facilities. The rates for each classification vary by facility, based on each facility's historical costs. Residents in higher classifications need more care and have a higher rate than residents in lower classifications at the same facility. Facility rates change annually on January 1 and may change during a year due to audits or special circumstances. Revenue received by a facility change, based on the mix of resident classifications. Each resident is reviewed within 14 days of admission or reentry from a hospital and every three months thereafter. A resident's classification may change only at the scheduled three-month interval or if hospitalization occurs. A facility is required to give 30-day notice to its residents whenever the facility's rates change. If an individual's classification

changes, no notice is required, and the rate is retroactive to the effective date of the reclassification.

Consultant's Report

The 2001 Legislative Assembly appropriated \$241,006 from the health care trust fund for the Department of Human Services to conduct a long-term care needs assessment and nursing facility payment system study. The committee learned the department utilized \$43,385 of this appropriation and \$43,385 of available federal matching funds to contract with Myers and Stauffer, L.C., of Topeka, Kansas, for a review of North Dakota's nursing facility payment system.

The consultant reviewed the following components of North Dakota's nursing facility payment system:

1. The 90 percent occupancy incentive.
2. The frequency of rebasing.
3. The policy of equalized rates.
4. The case mix payment system.

The committee received the report of the consultant, which contains the following recommendations and the department's responses:

1. Evaluation of the 90 percent occupancy incentive - The consultant recommended the state continue the minimum occupancy percentage at 90 percent. The department concurs with this recommendation.
2. Evaluation of rebasing frequency - The consultant recommended the state:
 - a. Establish a maximum number of years between rebasing. The department believes this is a policy decision to be made by the Legislative Assembly.
 - b. Monitor and evaluate facility spending patterns during periods between rebasing that would identify:
 - (1) Significant changes in costs in excess of that estimated by the inflation index.
 - (2) Changes in the allocation of costs between direct, other direct, and indirect cost categories.
 - (3) Changes in a facility's resident acuity.The department concurs with the recommendation and believes additional analysis may be useful in establishing benchmarks to be used by the Legislative Assembly in determining if more frequent rebasing is necessary.
 - c. Change the method of calculating limits from the percentile method to a "median plus" method. The percentile method precludes a certain number of providers above the limit from receiving payments that cover all costs. The "median plus" method potentially will allow all facilities to operate at a level below the established limit. The department concurs with the recommendation and recommends the process be changed when limits are rebased.
 - d. Set limits for direct, other direct, and indirect costs at the "median plus" 20 percent,

20 percent, and 10 percent, respectively, or in proportion with these recommendations in order to achieve the greatest cost coverage for the Medicaid funding available. The consultant estimates implementation of this recommendation would cost an additional \$136,694 per year, of which approximately \$41,000 would be from the general fund. If the method of calculating limits is changed, the department concurs with this recommendation.

3. Evaluation of North Dakota's equalized rate policy - The consultant recommended the state:

a. Continue the rate equalization policy of limiting rates for private pay individuals and other nongovernmental payers in semiprivate rooms to the comparable Medicaid rate.

b. Limit the additional amount nursing facilities may charge for a private room to \$10 per day. The department believes the decision to limit a nursing facility's ability to charge additional amounts for private rooms is a policy decision that should be made by the Legislative Assembly. This recommendation would not affect the payments made under the state Medicaid program.

c. Change the current Medicaid property cost calculation to reflect the growing number of private rooms. The rate calculation should consider the square footage separately for private rooms and semiprivate rooms on a per resident basis. The consultant estimates implementation of this recommendation would reduce Medicaid program costs by \$635,555 per year, of which approximately \$191,000 would be from the general fund. The department is reluctant to implement this recommendation because it would create a rate differential based on the type of accommodation that was not anticipated when equalized rates were implemented and would shift Medicaid savings to private pay residents who occupy private rooms. In addition this change would add administrative complexities by requiring the department and providers to maintain 68 rather than 34 rates.

4. Review of the case mix payment system - The consultant recommended the state:

a. Implement an MDS accuracy audit program and if errors are found, change facility payment rates and recoup overpayments. The consultant estimates annual Medicaid overpayments could be \$91,000, and the savings from the audits would provide funding for an additional staff person to conduct the audits. The department concurs with the recommendation and has begun to review the accuracy of the

classification process, provide technical assistance, and recoup funds as appropriate. Because staff resources are limited, the department is able to visit only a few facilities each quarter. If the reviews indicate major problems, the department will attempt, within the resources available, to increase the number of reviews.

b. Consider adopting the next version of MDS when it becomes available from the federal government in 2004. The department plans to consider adopting the new version when it is available but will consult with the long-term care industry and the Legislative Assembly before making any major changes in the classification process.

Long-Term Care Needs Assessment

The 2001 Legislative Assembly appropriated \$241,006 from the health care trust fund for the Department of Human Services to conduct a long-term care needs assessment and nursing facility payment system study. The committee learned the department used \$193,900 of this appropriation to contract with the University of North Dakota and North Dakota State University for a long-term care needs assessment, which included service areas, elderly age and distribution profile, elderly needs profile, and labor components. In addition the North Dakota Long Term Care Association planned to complete a provider and facility profile component.

The committee learned the long-term care needs assessment will be completed by the end of November 2002. The committee received the following preliminary findings and recommendations of the long-term care needs assessment:

1. North Dakota's population over age 55 is generally healthier than the national average.
2. North Dakota's reservation population is generally much less healthy than the national average and less healthy than the remainder of the state's population.
3. Generally North Dakota's chronic disease rates are lower than national norms but higher among the state's elderly American Indians.
4. Sixty-nine percent of North Dakotans age 50 and over do not plan to relocate in the next 10 years.
5. North Dakotans living in rural frontier counties are the most committed to staying in their homes and communities.
6. The presence of functional limitations does not impact plans to move--even those with emerging disabilities plan to stay in their homes and local communities.
7. The number of services available declines from urban to rural to rural frontier.
8. Availability of services is a major issue.
9. Transportation to services is a major issue.

10. Nursing home insurance has been purchased by 25.9 percent of North Dakotans over age 50.
11. Affordable assisted living services are needed, especially in the rural and reservation communities.
12. Health promotion and wellness activities designed to prevent functional limitations are needed to allow individuals to remain independent.
13. Family and informal care giving should be developed and integrated into a broad plan of long-term care.
14. Formal and informal caregivers should be organized into regional alliances to provide a full range of services.
15. Rural development in North Dakota should include service sector jobs.
16. North Dakota must develop a system of service delivery for home and community-based services to serve the rural elderly.
17. "Telehealth" should be explored to offer additional support for a dispersed model of services for offsite diagnosis and evaluation.
18. A special task force should be organized to address the long-term care needs of reservation populations because the number of American Indians over the age of 65 is increasing rapidly.
19. Long-term care workers' wages should be regularly monitored, with adjustments made to maintain competitive salaries.
20. North Dakota's wages for long-term care workers are slightly less than national averages. Salaries for registered nurses are 94.1 percent of the national average, salaries for licensed practical nurses are at 94.7 percent of the national average, and certified nurse assistants are at 100 percent of the national average.
21. Providing benefits to all full-time workers, especially health insurance coverage, will assist with worker retention.

Nursing Facility Bed Reduction Incentive Program

The 2001 Legislative Assembly appropriated \$4 million from the health care trust fund to the Department of Human Services to provide incentives to nursing facilities to reduce licensed bed capacity. The department was authorized to pay incentives of up to \$15,000 per bed if a facility eliminates its entire licensed bed capacity, \$12,000 per bed if a facility reduces at least eight beds, and \$8,000 per bed if a facility reduces fewer than eight beds. The committee received reports at each committee meeting on the status of the nursing facility bed reduction incentive program. The committee learned the department accepted offers from nursing facilities each quarter to reduce licensed bed capacity, and that through September 2002 the department paid \$3.2 million to nursing facilities to eliminate 270 licensed beds.

Long-Term Care Facility Bed Moratorium

House Bill No. 1196 continued the moratorium on the expansion of nursing facility or basic care bed capacity through July 31, 2003. However, provisions were added allowing a nursing facility, once in a 12-month period, to convert licensed nursing facility bed capacity to basic care bed capacity and a basic care facility to convert basic care bed capacity that was licensed after July 2001 to nursing facility bed capacity. In addition the provisions added allow the Alzheimer's and related dementia pilot projects which were operating during the 1999-2001 biennium to be licensed as basic care and allow an applicant to receive licensure if the need for additional basic care bed capacity can be demonstrated to the State Department of Health and Department of Human Services.

The committee received information from the State Department of Health on nursing facility and basic care licensed bed capacity and requests for transfers of bed capacity between nursing facilities and basic care facilities. North Dakota had 6,902 nursing facility beds licensed as of August 1, 2001. Since that time 31 facilities decreased a net total of 269 beds providing 6,633 licensed beds as of September 2002.

North Dakota had 1,460 basic care beds licensed as of August 1, 2001, and since that time the number of beds has increased by 36 to a total of 1,496. Three conversions of nursing facility beds to basic care beds occurred during this time period. The Good Samaritan Centers in Arthur, Devils Lake, and Mott each transferred six beds from nursing care to basic care status.

Olmstead Commission

The committee learned the Governor issued an executive order in August 2001 establishing an Olmstead Commission to study North Dakota's compliance with requirements of the Olmstead decision. The Olmstead decision resulted from a Georgia lawsuit relating to providing adequate care to the elderly and disabled in the least restrictive environment. The commission received a starter grant from the federal government to fund the commission.

The Olmstead Commission conducted a series of public meetings across the state and gathered other information to determine appropriate state actions to comply with the implications of the Olmstead decision.

The committee learned the commission was awarded a \$900,000 federal grant to develop the following five pilot projects:

1. Person-centered care, which is designed to broaden the local continuum of care provided by long-term care facilities. This project will involve two rural and two urban nursing facilities providing a more client-driven model of care, including less restrictive alternatives and/or home care when appropriate.
2. Financial pooling, which is designed to allow funding to follow the client. All public and private funds available for a client will be pooled

and the client given the ability to purchase services as necessary. The provider must include a health system or long-term care facility.

3. Living in place, which is designed to allow individuals to live in their homes and receive necessary personal services, modifications, and assistive technology.
4. Cultural module, which is designed to build capacity for home care among American Indians by utilizing existing training available at the United Tribes Technical College enhanced with the necessary components to enable students to provide in-home care to people with disabilities on the reservations.
5. Informational access to services, which is designed to coordinate existing resources such as the senior information line, Children's Services Coordinating Committee directories, and other resources to ensure that available services throughout the state are identified and may be accessed from one contact.

Other Information and Testimony

The committee received information from representatives of the Evangelical Lutheran Good Samaritan Society regarding the future of long-term care services in North Dakota. The society, along with a number of industry and state representatives, has created a task force to study innovative ways of providing long-term care services to the elderly in their homes and ways to provide funding for this type of care.

The committee heard testimony from representatives of the Long Term Care Association regarding long-term care needs and the nursing facility payment system that included concerns regarding:

1. The consultant's recommendation to limit the amount nursing facilities may charge for private rooms. The consultant indicates that facilities are not charging too much for private rooms; therefore, the association does not believe a limit needs to be put in place. Private room revenue is the only flexibility nursing homes have to increase revenues.
2. The increase in premium rates nursing facilities are being charged for professional, general, and liability insurance policies. General liability insurance premiums have tripled in the last two years.
3. Medicare rate reductions of 10 percent on October 1, 2002, resulting in an average loss of \$26.75 per resident per day for every Medicare resident in a North Dakota nursing facility.

The committee heard testimony from other interested persons that included concerns regarding:

1. Nursing facilities being allowed to charge higher rates for private rooms, circumventing the intent of the equalized rates provision.
2. Nursing facilities receiving reimbursement for residents that are temporarily hospitalized, while basic care facilities do not.

Recommendation

The committee recommends that the Department of Human Services present the final report of the long-term care needs assessment and nursing facility payment system study to the House and Senate Human Services and Appropriations Committees during the 2003 legislative session.

SENIOR CITIZEN MILL LEVY MATCHING GRANT STUDY

Section 18 of House Bill No. 1012 directed a study of the senior citizen mill levy matching grant program.

History of Program

The committee reviewed the history of the senior citizen mill levy matching grant program. The committee learned the 1971 Legislative Assembly authorized counties or cities to levy up to one mill to establish and maintain programs and activities for senior citizens. In 1979 the Legislative Assembly established the state matching program for senior citizen programs and activities. The 1999 Legislative Assembly approved legislation increasing the number of mills a county or city may levy for senior citizen programs from one to two mills. The following schedule presents the history of funding for senior citizen matching programs:

SENIOR CITIZEN MILL LEVY MATCHING FUNDS					
Biennium	Mill Levy Matching	Title III Matching	Total	General Fund	Special Funds
2001-03	\$1,662,945	\$720,000	\$2,382,945	\$2,132,945	\$250,000 ¹
1999-2001	\$1,262,945	\$720,000	\$1,982,945	\$1,982,945	
1997-99	\$1,050,000	\$720,000	\$1,770,000	\$1,770,000	
1995-97	\$900,000	\$720,000	\$1,620,000	\$1,620,000	
1993-95	\$900,000	\$720,000	\$1,620,000	\$1,332,000	\$288,000 ²
1991-93	\$900,000	\$720,000	\$1,620,000	\$720,000	\$900,000 ²
1989-91		\$720,000	\$720,000 ³	\$720,000 ³	
1987-89	\$1,646,400	⁴	\$1,646,400 ⁵	\$1,646,400 ⁵	
1985-87	\$1,680,000	⁴	\$1,680,000	\$1,680,000	
1983-85	\$1,350,000	⁴	\$1,350,000	\$1,350,000	
1981-83	\$1,200,000	⁴	\$1,200,000	\$1,200,000	
1979-81	\$1,000,000	⁴	\$1,000,000	\$1,000,000	

¹ Special funds from the health care trust fund.

² Special funds from the state aid distribution fund.

³ This legislative appropriation of \$1,680,000 was reduced by \$940,000 as a result of budget reductions relating to the tax referrals.

⁴ Title III matching funds were not identified separately from the mill levy matching program.

⁵ The legislative appropriation of \$1,680,000 was reduced by \$33,600 as a result of the Governor's 2 percent budget allotment.

The following schedule shows the state matching as a percentage of the funding collected from senior citizen mill levies for recent years:

Tax Year	Disbursements	State Matching Percentage of Local Mill Levy
2001	\$831,473	54.0%
2000	\$631,473	43.2%
1999	\$631,473	46.3%
1998	\$525,000	40.9%
1997	\$525,000	42.6%

Matching Grant Options

The committee considered various options for distributing grants under the senior citizen mill levy matching

grant program. Currently one-half of the appropriation is used each year to match the proportionate share of the local mill levy for each political subdivision. The options considered and the related estimated fiscal impact based on 2001 tax year data are to:

1. Limit county mill levies for senior citizen programs to one mill and provide matching grants based on funding appropriated by the Legislative Assembly. Based on 2001-03 appropriations of \$831,473 per year and 2001 tax data, the matching grants percentage would increase by 10 percent, from 54 percent to 64 percent of the amounts collected by counties and cities up to the maximum of a one-mill levy. Counties would not be allowed to levy more than one mill.
2. Match county mill levies at 100 percent for up to the first mill levied. Based on 2001 tax data, this would require additional funding of \$477,085 per year or \$954,170 per biennium.
3. Limit state matching grants up to the first mill levied but maintain each city or county payment to at least the same level as the city or county received in 2001. Based on 2001 tax data, this would require additional funding of \$264,707 per year or \$529,414 per biennium.
4. Limit state matching grants up to the first mill levied and provide matching grants based on funding appropriated by the Legislative Assembly. Based on current appropriations of \$831,473 per year and 2001 tax data, the matching grants percentage would increase by 10 percent, from 54 to 64 percent of the amounts collected by counties and cities for senior citizen programs.
5. Distribute state matching grants to counties and cities based on the proportion of each entity's assessed property value to the statewide assessed property value and based on funding appropriated by the Legislative Assembly. Under this option the mill levy of each county or city would no longer be a factor in determining the amount of state matching grants received by that county or city.

Mill Levy Changes

The committee reviewed the process used by a city or county to change its senior citizen mill levy. The committee learned that once a mill levy for senior citizen programs is authorized, a county or city may change it by one of the following methods:

1. The county commission or city governing body may adjust the annual levy based on funding needs for senior citizen programs; however, the levy may not exceed the authorized senior citizen mill levy approved by the electors of the county or city.
2. The county commission or city governing body may place the issue of increasing the mill levy on the next general election ballot.

3. A petition may be submitted, signed by at least 10 percent of the qualified electors voting in the last general election, to place the issue of increasing the mill levy on the next general election ballot.
4. The levy may be adjusted as a result of a decline in taxable valuation in the county or city to maintain the dollars levied in the base year (the highest collections of the three most recent taxable years) pursuant to NDCC Section 57-15-01.1. If the maximum mill levy authorized would result in a lesser amount being raised than the highest annual amount collected in the three most recent taxable years, this section allows a city or county to increase its mill levy above the maximum authorized by law to provide the same level of funding as raised in the highest of the three most recent taxable years.
5. The county commissioners or governing body of a city may call a special election to authorize an excess levy pursuant to NDCC Chapter 57-17, which provides for an excess levy that may not exceed 50 percent of the maximum amount authorized by Chapter 57-15 (which, for the senior citizen mill levy, would be an additional one mill, for a total of three mills). The excess levy may be authorized for no more than two years.

Senior Citizen Mill Levy Retained Funds

The committee reviewed the process used by counties and cities to approve and disburse senior citizen mill levy and matching grant funds to senior citizen programs. Each year senior citizen organizations submit proposed budgets to the board of county commissioners or the city governing body. Based on these funding requests and projected available funding, the board of county commissioners or city governing body approves funding levels for each of the organizations. Counties and cities generally distribute all the senior citizen mill levy and state matching grant fund collections to senior citizen organizations in the year the funds are received. A variety of methods are used by the counties and cities to disperse the funding to organizations, including reimbursing organizations for actual expenses, disbursing the funds to a county council on aging which distributes the funds to various senior citizen organizations, or disbursing the funds directly to the organizations either monthly, quarterly, or annually.

The majority of organizations spend all funds received during the year. Organizations that have funding left at the end of the year must include the unspent amount in their next year's budget request as carryover funds. The board of county commissioners or city governing body considers the amount of carryover funds when approving funding for the organization for the next year. Organizations may be authorized, through budgets submitted to the board of county commissioners or city governing body, to retain funds for specific

purposes such as new vehicles, major repairs, improvements, or capital projects. The committee learned that statewide a total of \$109,670 of senior citizen program funds remained unspent as of December 31, 2000.

Other Information and Testimony

The committee received information on the number of individuals served as a result of the funding provided by the senior citizen mill levy matching grant program. Counties and cities reported that 62,468 individuals received services in 2001 as a result of the funds generated from senior citizen mill levies and matching grants. The uses of the mill levy and matching grant funds vary by county, affecting the number of individuals served. Some counties use these funds to match federal Title III Older Americans Act funding while others do not.

The committee heard testimony from other interested persons. Major comments included:

1. Support for the current method of providing matching funds to counties and cities for senior citizen programs.
2. A request that additional funding be provided for senior citizen programs because federal funds provided by the Older Americans Act provide for only one-third of the cost of senior citizen services.

3. A request that the Legislative Assembly increase funding to match county senior citizen mill levies at 100 percent rather than 54 percent of formula.
4. Support for the mill levy funding as an important component of the continuum of care to allow the elderly to remain in their homes and local communities.

Conclusion

The committee makes no recommendation as a result of its study of the senior citizen mill levy matching grant program.

ALTERNATIVES-TO-ABORTION SERVICES STUDY

Section 1 of Senate Bill No. 2354 directed a study of the feasibility and desirability of establishing an alternatives-to-abortion services program that would provide information, counseling, and support services to assist women to choose childbirth and to make informed decisions regarding the choice of adopting or parenting.

Statistics

The following schedule presents abortion statistics in North Dakota and the United States since 1990:

	North Dakota			United States		
	Pregnancies	Abortions	Abortion Percentage	Pregnancies	Abortions	Abortion Percentage
1990	10,386	1,065	10.3%	6,778,000	1,609,000	23.7%
1991	9,924	986	9.9%	6,674,000	1,557,000	23.3%
1992	9,885	1,017	10.3%	6,596,000	1,529,000	23.2%
1993	9,655	910	9.4%	6,494,000	1,500,000	23.1%
1994	9,568	935	9.8%	6,373,000	1,431,000	22.5%
1995	9,474	928	9.8%	6,245,000	1,364,000	21.8%
1996	9,250	862	9.3%	6,240,000	1,366,000	21.9%
1997	9,226	826	9.0%	6,192,000	1,328,000	21.4%
1998	8,826	847	9.6%			
1999	8,557	883	10.3%			
2000	8,585	863	10.1%			
2001	8,461	750	8.9%			

Federal Title X - Family Planning Program

The committee reviewed the federal Title X family planning program. Title X of the Federal Public Health Service Act of 1970 authorizes the family planning program, which is administered by the United States Department of Health and Human Services, Office of Population Affairs. The program authorizes grants to assist in the establishment and operation of voluntary family planning projects offering a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents). The mission of the program is to provide individuals the information and means to exercise personal choice in determining the number and spacing of their children. Program funds may be used for providing information and counseling regarding abortion but not for abortion programs. Funding received under the program does not require any state matching funds. The program

offers pregnant women the opportunity to be provided information and counseling regarding:

1. Prenatal care and delivery.
2. Infant care, foster care, or adoption.
3. Pregnancy termination.

The federal grants may be provided to either public or nonprofit private entities. In North Dakota the State Department of Health receives the federal Title X grants and administers the family planning services through contracts with nine delegate agencies across the state. The family planning grants are awarded competitively every five years. The next competitive grant award in North Dakota will be in 2005. The Title X family planning projects in North Dakota, South Dakota, Colorado, and Montana are administered by each respective state; however, in Minnesota, Utah, and Wyoming, the federal Title X funds are awarded to a nonprofit organization in each state to operate the family planning projects.

The State Department of Health received base funding under federal Title X of \$547,000 in federal fiscal year 2002 as well as \$174,000 for special initiatives. The department anticipates receiving base funding of \$807,000 as well as \$118,000 of funding for special initiatives in federal fiscal year 2003 and base funding of approximately \$800,000 and possibly \$100,000 for special initiatives in federal fiscal year 2004.

The program, operated through the nine delegate agencies, offers family planning services at 18 clinic sites in North Dakota. In calendar year 2000, 14,494 clients made 24,062 visits to the family planning agencies. Of the 14,494 clients, 8,791 had incomes below 150 percent of the federal poverty level. Clients pay for services based on household size and income. Clients with income at or below 100 percent of the poverty level receive services at no cost.

The program provides pregnancy testing, diagnosis, counseling, and referrals. Each clinic is required to maintain a service referral list, which must be made available to clients, for women with positive pregnancy test results. Pregnant clients must be offered information and counseling regarding prenatal care and delivery, infant care, foster care, adoption, and pregnancy termination. The committee learned that based on a 1997 survey, approximately four percent of pregnant women seen at the clinics request information on abortion services.

Title X regulations as originally adopted in 1970 required family planning programs to provide pregnant women with information on prenatal care and delivery, infant care, foster care, or adoption. The requirement that information on pregnancy termination be available was added in 1976. The regulatory language requiring family planning projects to offer this information was added in January 2001.

The committee received the following information from each of the nine delegate agencies providing family planning services under federal Title X in North Dakota:

1. Upper Missouri District Health Unit, Williston - Serves the counties of Divide, McKenzie, Mountrail, and Williams. In calendar year 2000 the health unit performed 193 pregnancy tests, 59 of which were positive. For those with positive tests, information was provided on all available options, the importance of prenatal care, and referrals as appropriate.
2. First District Health Unit, Minot - Serves the counties of Bottineau, Burke, McHenry, McLean, Renville, Sheridan, and Ward. In calendar year 2000 the health unit performed 147 pregnancy tests, 69 of which were positive. The 69 clients who tested positive met with a social worker and were informed of the options available to the client. The program was unaware of how many women chose abortion.
3. Lake Region District Health Unit, Devils Lake - Serves the counties of Benson, Eddie, Pierce, Ramsey, Nelson, Cavalier, Rolette, Towner, Wells, and McHenry. In calendar year 2000 the health unit performed 50 pregnancy tests, 12 of

which were positive. Of the 12 positive tests, seven planned to continue the pregnancy and keep the child, two were deciding if they would keep the child or give it up for adoption, and three were unsure of their plans.

4. Valley Health, Grand Forks - Serves the counties of Grand Forks, Nelson, Pembina, Steele, and Walsh. In calendar year 2000 the program performed 484 pregnancy tests, 99 of which were positive. Of the 99 positive tests, 65 birth outcomes were unknown, 14 continued the pregnancy, 7 miscarried, and 13 chose abortion.
5. Fargo-Cass Public Health and Family Planning Clinic, Fargo - Serves Cass County. In calendar year 2000 the clinic performed 413 pregnancy tests, 85 of which were positive. Of the 85 positive tests, 19 were planned pregnancies and 66 were unintended. Of the 66 unintended pregnancies, outcome data was available on only 16. Of the 16, seven continued the pregnancy, two miscarried, and seven chose abortion.
6. Richland County Family Planning, Wahpeton - Serves the counties of Ransom, Richland, and Sargent. In calendar year 2000 the program performed 109 pregnancy tests, 11 of which were positive. Of the positive tests, six individuals were given information on prenatal care and services available to pregnant women and five were given information on all options. Of the five clients given information on all options, three proceeded with prenatal care, one was undecided, and one chose abortion.
7. Central Valley Family Planning Program, Jamestown - Serves the counties of Barnes, Dickey, Eddy, Foster, Griggs, Kidder, LaMoure, Logan, McIntosh, Ransom, Sargent, Stutsman, and Wells. In calendar year 2000 the program performed 97 pregnancy tests, 32 of which were positive. Of the positive tests, 28 received information on prenatal care, one on adoption, and three on all options.
8. Custer Family Planning Center, Bismarck - Serves the counties of Burleigh, Emmons, Grant, Mercer, Morton, Oliver, and Sioux. During calendar year 2000 the center performed 406 pregnancy tests, 83 of which were positive. Of the positive tests, 64 received prenatal care, eight chose abortion, and 11 had unknown outcomes.
9. Community Action and Development Program, Inc., Dickinson - Serves the counties of Adams, Billings, Bowman, Dunn, Golden Valley, Hettinger, Slope, and Stark. In calendar year 2001 the program performed 184 pregnancy tests, 17 of which were positive. The individuals with positive results were provided the "Before You Decide" brochure and encouraged to read it before making a decision. These individuals were also counseled regarding the options and provided information based on their decision or referred for further counseling, as appropriate.

Use of Temporary Assistance for Needy Families Funds

The committee received information on the potential use of federal temporary assistance for needy families (TANF) program funds for alternatives-to-abortion services programs. The committee learned if federal TANF funds are to be used for an alternatives-to-abortion program, any proposed legislation should indicate how the program will accomplish the purposes of federal TANF funding. Under federal law, the purpose of TANF funding is to:

1. Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives.
2. End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage.
3. Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies.
4. Encourage the formation and maintenance of two-parent families.

Because TANF funding is a block grant to the states, any allocation by the Legislative Assembly generally will be considered appropriate. However, if the allocation is not consistent with federal law, it could be questioned by the State Auditor while conducting the state's single federal audit. The committee reviewed a letter from representatives of the federal Department of Health and Human Services indicating it may be appropriate for the state to use federal TANF funds for an alternatives-to-abortion services program.

Alternatives-to-Abortion Services

The committee heard testimony from representatives of organizations providing alternatives-to-abortion services in North Dakota.

Representatives of these organizations testified that the private sector is currently providing alternatives-to-abortion services in many parts of the state. These representatives also testified that if government program funding were made available for alternatives-to-abortion services, many of the organizations would likely not apply because of the potential negative involvement of the government in the operations and activities of the alternatives-to-abortion services programs.

The committee received information from the AAA pregnancy clinic in Fargo and learned the clinic is a nonprofit corporation that serves individuals facing a crisis pregnancy and provides community outreach educational programs focusing on abstinence education. The program began in Fargo in 1984. The clinic provides free services to women facing unplanned pregnancies. The program does not refer for abortions or provide information on abortion but provides life-affirming education and support services. Services provided by the clinic include medical services, financial support, and material aid. The program receives donations from individuals, businesses, and churches.

The committee received information from the Womens Care Clinic, Fargo. The Womens Care Clinic provides alternatives-to-abortion services and employs a full-time counselor to provide pregnancy counseling services.

Other Testimony

The committee received information from other interested persons. Comments included:

1. State involvement in alternatives-to-abortion services programs may reduce the private sector's motivation for developing these programs.
2. There is a need for more pregnancy crisis centers, but they should be financed by the private sector.
3. The state should not be involved in providing funding for birth control.

The committee received information from the North Dakota Life League. The North Dakota Life League reviewed the North Dakota family planning program in 1996 and 1997 and expressed the opinion that the program's brochures support abortion, advertise second trimester abortions at a Minnesota facility, and encourage promiscuous behavior.

The committee received recommendations from the North Dakota Life League for reducing the number of abortions. Recommendations presented included that the state:

1. Eliminate sex education in public schools.
2. No longer accept Title X funds which make contraceptives available to minors, enabling promiscuity among the state's youth, causing alarmingly high rates of related infectious diseases, and increasing the number and percentage of women who choose abortion.
3. Allow private sector programs to provide alternatives-to-abortion services without state involvement.
4. Not support abortion-related programs.

Committee Considerations

The committee reviewed a bill draft that would establish an alternatives-to-abortion marketing task force to develop and implement a statewide marketing plan to promote alternatives-to-abortion services and provide an appropriation of \$100,000 from the general fund to the Department of Human Services to market the services during the 2003-05 biennium.

The committee received information from the State Department of Health regarding options for providing a toll-free telephone number for alternatives-to-abortion services referrals. The committee learned the State Department of Health is considering developing a statewide toll-free public health information line that would allow the public to gain health information, advice, and referrals. Nurses trained to assist the public using nationally recognized protocols and procedures would staff the line. The line would help detect bioterrorism, improve health, and increase efficiency. The committee

learned the State Department of Health believes that nurses staffing the line could address questions relating to unexpected pregnancies and would provide information on all legal options, including alternatives-to-abortion and abortion services.

Conclusion

The committee does not make any recommendation as a result of its study of alternatives-to-abortion services.

CHARITABLE CHOICE STUDY

Senate Concurrent Resolution No. 4034 directed a study of the issues and concerns of implementing Charitable Choice.

Federal Law

Current Law

Charitable Choice is the privatization of federally funded welfare services through faith-based organizations. Charitable Choice provisions were first included in the federal welfare reform measure, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This law allows states to administer and provide TANF services or benefits through contracts with nongovernmental entities or to provide TANF recipients with certificates or vouchers redeemable with private entities. The law allows states to contract with religious organizations to provide federally funded services under specifically named programs on the same basis as any other nongovernmental provider without impairing the religious character of the organizations or the religious freedom of the recipients. Charitable Choice does not contain new funding for faith-based organizations, and it only applies to programs designated by Congress. In addition to the TANF program, other federal programs authorizing Charitable Choice include the child care and development block grant, programs available under the community services block grant, and substance abuse treatment and prevention services programs under Titles V and XIX of the Public Health Services Act.

Under Charitable Choice rules, the government may not discriminate against an organization that applies to provide services on the basis of its religious character and may not require it to remove religious art or other symbols as a condition of participation. In addition Charitable Choice specifies that religious organizations retain control over the definition, development, practice, and expression of their religious beliefs. The rules contemplate that religious organizations will employ their faiths in publicly funded programs using their own resources. A religious organization's use of public funds is subject to audit, but if the federal funds are segregated into separate accounts, only these accounts are subject to audit.

Charitable Choice rules also require that a religious organization cannot discriminate against a beneficiary or potential beneficiary on the basis of religion or religious belief, and if a recipient objects to the religious character

of the provider, the government must provide an alternate and accessible provider.

Concerns of the Charitable Choice provisions relate to the interpretations and applications of the establishment of the religion clause of the First Amendment which has generally been interpreted by the United States Supreme Court to prohibit government from sponsoring or financing religious instruction or indoctrination. Generally, programs operated by religious organizations that receive public funding in the form of grants or contracts must essentially be secular in nature. Charitable Choice attempts to move beyond these restrictions and allow faith-based organizations to participate in publicly funded social services programs while retaining their religious character.

Proposed Changes

In 2001 President Bush recommended expanding Charitable Choice by further involving faith-based organizations in the provision of government-funded services. The President's proposal included the following initiatives:

1. A commitment to fully implement the Charitable Choice measures that have been enacted into law.
2. The establishment of private programs incorporating Charitable Choice to assist children and families of prisoners, to improve inmate rehabilitation prior to release, to establish maternity group homes, and to provide after school programs for low-income children.
3. The creation of an office of faith-based and community initiatives in the White House to enhance and promote government's partnership with faith-based and community organizations.
4. The establishment of a center for faith-based and community initiatives in each of five federal agencies--the Departments of Health and Human Services, Housing and Urban Development, Labor, Justice, and Education.
5. Encourage and assist states to create offices of faith-based and community initiatives.
6. The expansion of incentives for private giving to religious and charitable organizations.

The committee monitored federal legislation throughout the interim and learned at the end of October 2002, two bills were still being considered by Congress relating to Charitable Choice--House Resolution 7, the Community Solutions Act, which passed the House of Representatives and Senate Bill 1924, the Care Act, which was not yet reported out of committee in the Senate. The committee learned the earliest the bills would be acted on would be mid to late November 2002.

Major provisions of House Resolution 7 are:

1. Nonitemizing taxpayers would be allowed to deduct charitable donations.
2. Faith-based organizations would be allowed to compete on an equal basis to provide certain programs administered by state or local governments, including juvenile justice and delinquency programs, crime prevention programs,

housing programs, Workforce Investment Act programs, Older Americans Act programs, child care development block grant programs, community development programs, domestic violence programs, and hunger relief activities.

3. Faith-based organizations would not have to alter the organizations' forms of internal government or remove religious art or symbols to be eligible to participate in a program.
4. Faith-based organizations would be allowed to require that their employees adhere to their religious practices.
5. If an individual receiving services objects to the religious character of a faith-based organization, the appropriate federal, state, or local government entity must provide the recipient, within a reasonable time, an alternative, including a nonreligious alternative.

Major provisions in Senate Bill 1924 included:

1. An "EZ Pass" program would be created. "EZ Pass" is a simplified method of allowing faith-based organizations to become a 501(c)(3) organization in order to compete on an equal basis with other private providers contracting with a state or local government to provide services.
2. Nonitemizing taxpayers would be allowed to deduct charitable donations.
3. A compassion capital fund would be established, including \$100 million to be granted to states or nongovernmental organizations for providing technical assistance to community based organizations, including those that are faith-based.

State Agency Contracts With Faith-Based Organizations

The committee received information from select state agencies on contracts with faith-based organizations.

Department of Human Services

The committee received information from the Department of Human Services regarding its contracts with faith-based organizations. The committee learned that for the 1999-2001 biennium the Department of Human Services contracted with 16 faith-based organizations at a cost of \$10.9 million, \$3.3 million of which was from the general fund. The major contracts related to refugee assistance, medical services, mental health services, guardianship services, intensive in-home services, and adoption services.

The committee learned the Department of Human Services enters into approximately 900 contracts each biennium, the majority of which involve federal funds. The federal government establishes monitoring requirements for contracts involving federal funds. For each contract the specific program administrator is responsible to ensure that the contract service is delivered according to contract terms. The majority of contracts require reports to be submitted at various intervals, to

provide service data, and to measure results. Payment requests submitted are reviewed prior to payment by both the program administrator and the designated department accountant. In addition many contracts are reviewed through onsite programmatic reviews.

State Department of Health

The committee received information from the state Department of Health on its contracts with faith-based organizations. For the 1999-2001 biennium the Department of Health entered into four contracts with faith-based organizations totaling \$255,204. The contracts related to screening, assessment, and educational services in the women, infants, and children (WIC) program and sexual assault services in the stop violence against women (STOP) program.

Department of Corrections and Rehabilitation

The committee received information from the Department of Corrections and Rehabilitation regarding its contracts with faith-based organizations. The committee learned that in the department's adult services program, the only contracts with faith-based organizations are those with pastors for providing chaplaincy services at the prison facilities in Bismarck and Jamestown. At the Youth Correctional Center the department contracts with the conference of churches for pastoral services, including drug and alcohol treatment services, at a cost of \$120,000 per biennium. In addition the department contracts with Lutheran Social Services at a cost of \$750,000 per biennium for statewide tracking services of students transitioning from institutional to community living.

Department of Public Instruction

The committee received information from the Department of Public Instruction regarding its contracts with faith-based organizations. The Department of Public Instruction administers the United States Department of Agriculture's Child Nutrition and Food Distribution Program. For the 1999-2001 biennium the department provided \$1,190,712 of federal funding to faith-based organizations under the Child Nutrition and Food Distribution Program. In addition the department provided \$62,000 of federal funds to Lutheran Social Services for the Great Plains Food Bank emergency food assistance program.

The committee learned the department indirectly provides funding to faith-based organizations for special education services. For the 1999-2001 biennium the Anne Carlson Center for Children received \$3,482,646 in special education funding and the Dakota Boys Ranch received \$714,996. In addition the Anne Carlson Center for Children received \$4,080 to conduct a self-assessment of its special education program.

The committee also learned that faith-based organizations providing nonpublic education services receive federal education funding through public school districts in the state. For the 1999-2001 biennium faith-based

organizations received \$1,596,638 of federal education funding.

Conclusion

The committee does not make any recommendation as a result of its study of Charitable Choice.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

North Dakota Century Code Section 50-09-29 provides that the Legislative Council approve any revisions to the administration of the TANF program by the Department of Human Services.

Pursuant to the section the department would need to receive Legislative Council approval to change the TANF program if there is insufficient work or opportunity to participate in work activities due to increases in the unemployment rate or if the administration of the program causes otherwise eligible individuals to become a charge upon the counties.

Federal Reauthorization

The committee learned the federal TANF block grant program is effective through September 30, 2002. At each committee meeting, the committee received information from the Department of Human Services on the status of the reauthorization of the federal TANF program by Congress. As of October 2002 Congress had not passed a bill reauthorizing the TANF program. Congress did, however, pass a continuing resolution continuing the TANF program under current rules and funding through December 31, 2002.

The committee learned in the discussions of TANF reauthorization, key issues supported by the states include:

1. Maintain funding at current levels.
2. Enhance states' flexibility.
3. Continue to require legislative appropriations of TANF funds.
4. Authorize contingency funding.
5. Remove designations on the uses of child care development block grant funds.
6. Maintain social services block grant funding and allow the flexibility to transfer funds between the TANF and social services block grants.
7. Restore TANF supplementary grants.

2001-03 Funding

For the 2001-03 biennium the Legislative Assembly appropriated \$25.6 million, \$4 million of which is from the general fund for the TANF program. As of October 2002 the Department of Human Services anticipates spending \$28.2 million for TANF benefits, \$2.6 million more than budgeted. The department anticipates the increased expenditures due to the number of TANF cases exceeding estimates by up to 460 cases per month. The committee learned the department received Emergency Commission and Budget Section approval in October 2002 to increase the appropriation authority for the TANF program by \$3.1 million, of which \$2.2 million is

from the federal TANF block grant and \$700,000 is from additional child support collections. The department anticipates carrying forward approximately \$7.2 million of federal TANF block grant funds into the 2003-05 biennium, which is \$1.7 million less than the \$8.9 million anticipated to be carried forward during the 2001 legislative session.

60-Month Benefit Limit

The committee reviewed the number of North Dakota families that may be affected by the federally required 60-month limit on TANF benefits. The committee learned that based on January 2002 caseloads, 47 families may receive their 60th month of assistance by December 2002. Federal regulations allow exceptions for families with certain situations such as medical concerns or disabilities. The department anticipates one-half of the 47 cases to be eligible for one of the exceptions which will allow them to continue receiving assistance beyond the 60th month. In addition approximately 40 percent of these families are earning wages and would qualify for child care and other support services after reaching their 60th month. The committee learned families that become ineligible for TANF may be eligible to continue to receive food stamps, Medicaid, heating assistance, and child care assistance.

Service Referrals

The committee received information on methods used to refer TANF recipients to appropriate services. Under the TANF program, referrals to child support and the Job Opportunities and Basic Skills (JOBS) program are mandatory and done immediately when a family is determined eligible for the TANF program. Other referrals are based on individual needs which at times can be difficult to identify and if identified, acceptance of services by the TANF recipient is sometimes difficult if the individual does not believe services, such as substance abuse services, are needed.

Individual Development Accounts

The committee received information on options for state support of individual development accounts through TANF funding. Individuals are allowed to save money in an individual development accounts without reducing benefits. The committee learned that "Saving our Cents" is a program that encourages TANF eligible families to begin saving money for the future by establishing individual development accounts. The program is a partnership between three community action agencies in North Dakota--the Southeastern North Dakota Community Action Agency in Fargo, the Red River Valley Community Action Agency in Grand Forks, and the Community Action and Development Program in Dickinson.

Program Changes

The committee was not asked by the Department of Human Services to approve any changes to the TANF program during this interim.

DEVELOPMENTAL DISABILITIES SERVICES REIMBURSEMENT SYSTEM

Section 1 of Senate Bill No. 2307 provides that the Legislative Council receive quarterly reports from the Department of Human Services regarding the progress in preparing a joint recommendation with developmental disabilities services providers for consideration by the 58th Legislative Assembly regarding a new statewide developmental disabilities services provider reimbursement system.

The committee learned the Department of Human Services and the developmental disabilities services providers organized a work group to develop the recommendation. The work group included one provider representative from each of the eight human service regions, the Southeast Human Service Center director, the West Central Human Service Center's regional developmental disabilities program administrator, the director of Protection and Advocacy, two legislators, and Department of Human Services representatives from the executive office, medical assistance, developmental disabilities, and fiscal administration.

The committee received quarterly reports from the Department of Human Services regarding the work group's progress. The work group held its final meeting on October 21, 2002, and although consensus of all developmental disabilities services providers was not reached, the committee learned a strong majority expressed support for the department, in cooperation with the developmental disabilities industry, developing a bill to implement a prospective fee for service payment system in lieu of the current retrospective system. The prospective fee for service model would be based on

allowable costs and be provider-specific. A prospective system will establish a reimbursement rate prior to the provision of services. Each provider's rate will be unique based on the respective provider's historic costs. The initial rate will be adjusted each year by inflationary increases until rebased as determined by the Legislative Assembly.

The Department of Human Services supports the recommendation with a targeted implementation date of July 1, 2005, with the understanding that the proposal will be budget-neutral.

The committee heard testimony from representatives of developmental disabilities providers regarding the recommendation. The committee learned the North Dakota Association of Community Facilities, which represents 26 developmental disabilities services providers in the state, supports the proposal recommended by the work group.

BUDGET TOURS

During the interim, the Budget Committee on Human Services functioned as a budget tour group of the Budget Section and visited the Northeast Human Service Center, North Dakota Vision Services - School for the Blind, Mill and Elevator, Developmental Center, Camp Grafton, Lake Region Human Service Center, and the School for the Deaf. The committee heard about facility programs, institutional needs for major improvements, and problems institutions and 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 2003 legislative session.

COMMERCE COMMITTEE

The Commerce Committee was assigned four studies. Section 2 of House Bill No. 1377 directed a study of the ability of occupational and professional boards with fewer than 100 licensees to process disciplinary complaints and carry out other statutory responsibilities. Section 16 of Senate Bill No. 2019 directed a study of the availability of venture capital, tax credits, and other financing and research and development programs for new or expanding businesses, including an inventory of the programs available, a review of the difference between public and private venture capital programs, an assessment of the needs of business and industry, the research and development efforts of the North Dakota University System, and a review of the investments of the State Investment Board and the feasibility and desirability of investing a portion of these funds in North Dakota. Section 17 of Senate Bill No. 2019 directed a study of the feasibility and desirability of expanding North Dakota's economic development marketing efforts to include international markets and establishing a global marketing division within the Department of Commerce. Section 4 of Senate Bill No. 2020 directed a study of the workforce training and development programs in North Dakota, including efforts to recruit and retain North Dakota's workforce, underemployment and skills shortages, current workforce training efforts, and the involvement of New Economy Initiative goals and strategies; and the Work Force 2000 and new jobs training programs and other workforce training and development programs administered by agencies of the state of North Dakota, and the feasibility and desirability of consolidating in a single agency and funding and administration of those programs.

The Legislative Council also assigned the committee the responsibility, under North Dakota Century Code (NDCC) Section 40-63-03, to receive annual reports from the Department of Commerce Division of Community Services on renaissance zone progress; under Section 65-06.2-09, to receive a report from the Workers Compensation Bureau regarding the bureau's safety audit of Roughrider Industries work programs and a performance audit of modified workers' compensation coverage; and under Section 15 of 2001 Session Laws Chapter 109, to receive the Securities Commissioner's finding and recommendations resulting from the commissioner's review of policies and procedures relating to access to capital for North Dakota companies, with the goal of increasing North Dakota companies' access to capital investment.

Committee members were Senators John M. Andrist (Chairman), Duaine C. Espgaard, Tony Grindberg, Joel C. Heitkamp, Karen K. Krebsbach, Deb Mathern, Duane Mutch, Carolyn Nelson, and Rich Wardner and Representatives Rick Berg, Byron Clark, Mark A. Dosch, Glen Froseth, Pat Galvin, Scot Kelsh, Doug Lemieux, Bob Martinson, Bill Pietsch, Dale C. Severson, Blair Thoreson, and Lonny Winrich.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in

November 2002. The Council accepted the report for submission to the 58th Legislative Assembly.

OCCUPATIONAL BOARDS STUDY

An informal survey performed by the Attorney General's office indicated that the following four North Dakota occupational and professional boards report fewer than 100 licensees or registrants:

1. Board of Hearing Instrument Dispensers;
2. Board of Podiatric Medicine;
3. State Board of Reflexology; and
4. State Board of Registration for Professional Soil Classifiers.

In performing its study, the committee reviewed the basic structure of occupational and professional licensing in North Dakota, South Dakota, Wyoming, and Minnesota. In addition to receiving testimony from representatives of the four boards that license fewer than 100 licensees, the committee received testimony from representatives of several professional entities, including the State Examining Committee for Physical Therapists, North Dakota Occupational Therapy Association, and North Dakota Society for Respiratory Care.

Legislative Background

2001 Legislation

House Bill No. 1259 provided that in lieu of providing for an audit every two years, an occupational or a professional board that has less than \$10,000 of annual receipts may submit an annual report to the State Auditor.

House Bill No. 1262 increased the membership of the Board of Podiatric Medicine from five persons to six persons. The bill provided that the additional member on the board must be designated as a public member and may not be affiliated with any group or profession that regulates or provides health care in any form. The bill also provided that a member of the Board of Podiatric Medicine may not serve for more than two successive terms, and a member may not be reappointed to the board after serving two successive terms unless at least two years have elapsed since the member last served on the board. The bill provided that in any order or decision issued by the Board of Podiatric Medicine in resolution of a disciplinary proceeding in which disciplinary action was imposed against a podiatrist, the board may direct the podiatrist to pay the board a sum not to exceed the reasonable and actual costs, including attorneys' fees, incurred by the board in the investigation and prosecution of the case. The bill authorized the Board of Podiatric Medicine to suspend a podiatrist's license until the costs are paid to the board.

House Bill No. 1377 authorized the Board of Podiatric Medicine, subject to approval by the Emergency Commission, to borrow funds sufficient to pay for attorneys' fees and costs incurred in investigations, administrative proceedings, and litigation resulting from the board performing its duties. The bill also authorized the

board to establish an annual renewal license fee for each year following the issuance of a loan and provided that the fee was to be maintained until the loan was fully repaid, including any accrued interest. The bill limited the amount of the annual renewal license fee to an amount not to exceed \$1,000.

Senate Bill No. 2115 provided that under NDCC Title 43 occupational or professional regulating entities, except the State Board of Accountancy, State Electrical Board, Real Estate Appraiser Qualifications and Ethics Board, Real Estate Commission, Secretary of State with respect to contractor licensing, State Board of Medical Examiners, and the State Board of Dental Examiners, may allow licensed professionals from foreign jurisdictions to practice in the state without a North Dakota license in certain situations. The bill authorized an occupational or a professional licensing board to issue a license, without examination, to any foreign practitioner who practiced the occupation or profession for which the practitioner is licensed at least two years before submitting the application to the board, or for any shorter period of time provided by law or rule, and who meets the other requirements for licensure. The bill authorized an occupational or professional licensing board to establish, by administrative rule, conditions and procedures for foreign practitioners to practice in the state pursuant to written compacts or agreements between the board and one or more other states or jurisdictions or pursuant to any other method of license recognition that ensures the health, safety, and welfare of the public.

Previous Legislation

In 1999 Senate Bill No. 2190 amended the laws addressing the compensation and reimbursement rate for members of the State Board of Registration for Professional Soil Classifiers; powers of the board to negotiate and enter reciprocal agreements with similar agencies in other states; registration requirements for applicants who are licensed in another state; and registration fees.

In 1995 Senate Bill No. 2533 provided that the licensure requirements for hearing aid dealers under NDCC Chapter 43-33 do not apply to certain employees of the federal government and to certain audiology graduate degree students. The bill added an additional audiologist and an additional consumer to the Board of Hearing Instrument Dispensers.

Previous Study

In 1995 Section 5 of House Bill No. 1001 directed the Legislative Council to study the membership, duties, and responsibilities of all boards, councils, committees, and commissions of state government, including consideration of whether any of those entities had overlapping powers and duties; whether any of those entities should be eliminated or consolidated; whether each entity performs the functions for which it was originally created; and whether the membership of each entity was responsive to the people of the state.

When the Legislative Council prioritized the study and assigned the study to the interim Government

Organization Committee, the Council indicated that the committee should base its study on the findings of the Governor's Task Force that reviewed boards and commissions in 1994. The task force recommendations included establishing a board to oversee the activities of all boards and commissions that have a licensing function, submission of financial statements by boards and commissions with a certified audit by an outside independent accounting firm, and establishing requirements to address excess funding of entities that collect fees.

The interim Government Organization Committee considered but did not recommend a bill draft that would have consolidated multiple boards.

State Laws

North Dakota

North Dakota law provides for 38 occupational and professional licensing boards as well as professional licensing by six state agencies. There has not been any recent successful consolidation of occupational and professional licensing boards in North Dakota.

Each of the four occupational and professional boards that reported fewer than 100 licensees or registrants--Board of Hearing Instrument Dispensers, Board of Podiatric Medicine, State Board of Reflexology, and State Board of Registration for Professional Soil Classifiers--is created and governed by its own unique body of law. Board membership, board powers and duties, fee structure, and particulars of the disciplinary proceedings for each board are unique to each board; however, commonalities between the boards include the application of NDCC Chapter 28-32--the North Dakota Administrative Agencies Practice Act.

The Board of Hearing Instrument Dispensers is created under NDCC Chapter 43-33. The board licenses approximately 60 to 65 hearing instrument dispenser specialists. The NDCC and the North Dakota Administrative Code (NDAC) address the board's duties, the fees charged by the board, disciplinary procedures, and grounds for disciplinary proceedings.

The Board of Podiatric Medicine is created under NDCC Chapter 43-05. The board licenses approximately 24 podiatrists. The NDCC and NDAC address fees charged by the board, disciplinary procedures, and grounds for discipline.

The North Dakota Board of Reflexology is created under NDCC Chapter 43-49. The board licenses approximately 43 reflexologists. The NDCC addresses the issues of fees and discipline.

The State Board of Registration for Professional Soil Classifiers is created under NDCC Chapter 43-36. The board licenses approximately 35 to 40 professional soil classifiers. The NDCC and NDAC address the board's powers and duties, fees, disciplinary procedure, and grounds for discipline.

South Dakota

An informal review of South Dakota law indicated that South Dakota law provides for 22 occupational and professional licensing boards, which are supervised

and provided administrative services by the Division of Professional and Occupational Licensing, Department of Commerce and Regulation. The Department of Commerce and Regulation publishes an annual report of the state's occupational and professional licensing boards. Research indicated that there has not been any recent movement to consolidate the state's boards; however, there has been discussion of consolidating the Board of Barber Examiners and the Cosmetology Commission. The following South Dakota occupational and professional boards license fewer than 100 licensees:

1. Abstracters' Board of Examiners;
2. Board of Hearing Aid Dispensers and Audiologists; and
3. Board of Podiatry Examiners.

Wyoming

An informal review of Wyoming law indicated that Wyoming law provides for at least 31 professional licensing boards. Thirteen of these 31 boards use support services provided through the Wyoming Department of Administration and Information. Research indicated that there has not been any recent movement to consolidate the state's occupational and professional licensing boards. Of the boards with a known number of licensees, the Board of Hearing Aid Specialists and Board of Registration in Podiatry licenses fewer than 100 licensees.

Montana

An informal review of Montana law indicated that Montana law provides for at least 38 occupational and professional licensing boards under the Business Standards Division, Montana Department of Labor and Industry.

Minnesota

An informal review of Minnesota law indicated that Minnesota law provides for at least 21 occupational and professional licensing boards as well as for licensing by seven state agencies. Although Minnesota legislators have discussed the possibility of consolidating some of the boards, there has not been any recent successful legislation consolidating these occupational and professional licensing boards. None of the Minnesota occupational and professional licensing boards license fewer than 100 licensees.

Testimony

Occupational and Professional Licensure Systems

The committee compared and contrasted the structure of North Dakota's occupational and professional licensing system with the systems of other states. The committee received testimony that a commonality between North Dakota's occupational and professional boards is that they are primarily stand-alone boards in that the boards are not affiliated with a particular state agency. A commonality between North Dakota's system

and the systems of other states is that it is common for professions to regulate themselves.

The committee received testimony that occupational and professional licensing boards usually have the power to discipline members of their own profession, including revocation of a license. Typically these disciplinary procedures allow for an appeal to the district court. The theory behind allowing occupational and professional boards to discipline members of their own profession is that members of a profession are best qualified and hold the necessary expertise required to make determinations on whether discipline is appropriate.

Boards of Fewer Than 100 Licensees

The committee requested information from the four boards that license fewer than 100 licensees regarding the fiscal status, disciplinary activities, and licensure activities of each of the boards. Additionally, the committee requested information regarding whether the financial status of the boards ever impacted the ability of the boards to perform their duties and whether there was a private entity that could perform voluntary professional certification instead of requiring licensure by a state board.

A representative of the State Board of Reflexology testified that the board is composed of volunteers.

A representative of the Board of Hearing Instrument Dispensers testified that the board has a two-term limit for board members. Testimony was received that the board is experiencing increasing difficulty finding members to serve on the board as the number of disciplinary complaints increases. The total number of disciplinary and other complaints the board receives annually fluctuates between 5 and 10. Complaints received by the board come from a variety of sources, with most complaints being contractual in nature, which the board does not typically address, or being complaints of improper advertising.

The committee received information regarding the fiscal status, disciplinary activities, and licensure activities of the Board of Hearing Instrument Dispensers for the past five years. The board's current cash and investments were \$26,610.45. Over the last five years the board had not issued any reciprocal licenses. During the last five years the board received eight disciplinary complaints, all of which were settled. Testimony indicated that lack of funds has never impacted the board's ability to perform its duties. Only one complaint in the board's history progressed to the administrative hearing level and that case was settled during the course of the hearing. The cost of that one administrative hearing was approximately \$20,000, and was paid from licensure fees.

A representative of the Board of Hearing Instrument Dispensers testified that the board adamantly opposed the idea of abolishing the board and allowing a private professional organization to provide voluntary certification of hearing instrument dispensers. Abolishment of the board would result in increased complaints due to uneducated individuals dispensing hearing instruments.

The committee received information regarding the fiscal status, disciplinary activities, and licensure activities of the State Board of Registration for Professional Soil Classifiers for the past five years as well as information regarding the number of licensees, the number of examinations given and the outcome, and the number of reciprocal licenses issued in the last five years. The board maintains approximately \$20,000 in certificates of deposit as a reserve in the event of litigation.

The State Board of Registration for Professional Soil Classifiers has not received any formal complaint against any member in the past five years; however, the board has investigated reports of individuals performing soil classification activities without being licensed in North Dakota. Testimony indicated that lack of funds has never impacted the board's ability to perform its duties.

The committee received testimony that although the American Society of Agronomy registers soil scientists as well as other disciplines, the American Society of Agronomy examination deals with science while soil classifiers deal both in science and the practical aspect; therefore, there is not a private entity that could adequately fulfill the licensure responsibilities of the State Board of Registration for Professional Soil Classifiers.

The committee received information regarding the fiscal status, disciplinary activities, and licensure activities of the Board of Podiatric Medicine for the past five years, including the board's average annual income, annual expenses, current cash balance and investments, and current debts due and owing; the number of licenses issued; and the outcome of examinations given for the last five years. The board had not issued any reciprocal licenses in the last five years.

A representative of the Board of Podiatric Medicine testified that from the years 1929 through 1993 there were no formal complaints processed by the board; however, in 1993 five formal complaints were processed, in the years 1994 through 1998 14 complaints were processed, and in the year 2000 six complaints were processed. Of the 25 formal complaints processed in the board's history, 23 complaints pertained to one podiatrist and two complaints pertained to a different podiatrist. All 25 of these complaints received by the board were submitted in writing from nonboard members and were then investigated as provided by law.

Generally, complaints received by the Board of Podiatric Medicine have equally split as originating from private citizens and from orthopedic surgeons or legal counsel for clinics with orthopedic surgeons. The board's experience had been that a typical administrative disciplinary hearing costs approximately \$50,000, which does not include the costs of an appeal to the district court or the North Dakota Supreme Court. Testimony indicated that lack of funds has never impacted the board's ability to perform its duties.

The committee received information regarding the financial problems of the Board of Podiatric Medicine relating to the disciplinary actions taken by the board over the last five years. Testimony indicated that

although the 57th Legislative Assembly gave the Board of Podiatric Medicine the authority to borrow money to meet the board's debts, the board did not borrow money. The financial problems of the Board of Podiatric Medicine were being resolved and the disciplined podiatrist was responsible for repayment to the board. Board members anticipated that within the next 18 to 24 months, the board would no longer be in debt. Although the current podiatrist licensure fee is \$500, the board members were hopeful that this fee would decrease once the board met its current financial obligations.

The Board of Podiatric Medicine opposed any plan abolishing the board in favor of a voluntary certification of podiatrists by a private professional organization. A return to pre-1929 "patient beware" status would not be in the public's best interest and would increase litigation. Additionally, the board opposed any plan to abolish the board and have the State Board of Medical Examiners license podiatrists. A representative of the Board of Podiatric Medicine testified that although it was possible the financial liability of podiatrists might decrease under the State Board of Medical Examiners, in the past, the State Board of Medical Examiners opposed expanding its jurisdiction to include licensure of podiatrists, in large part due to the Board of Podiatric Medicine's financial liabilities and because of the expenses associated with disciplinary administrative hearings.

A representative of the State Board of Medical Examiners testified in opposition to having the State Board of Medical Examiners license podiatrists, citing curriculum, licensure, and disciplinary issues that would arise with consolidation of the Board of Podiatric Medicine and the State Board of Medical Examiners. Additionally, testimony indicated that increasing the size of the State Board of Medical Examiners would result in increased board costs.

Boards of More Than 99 Licensees

A representative of the State Examining Committee for Physical Therapists testified in opposition to any attempt to merge the boards of physical therapy, occupational therapy, respiratory therapy, and reflexology. Regulation of the profession of physical therapy needs the expertise and peer review of physical therapists. Other health care providers are not qualified to regulate physical therapy and could have interests limiting or conflicting with the practice of physical therapy. The consolidation of state boards could lead to decreased oversight and peer review and could ultimately result in harm to the public.

A representative of the North Dakota Occupational Therapy Association testified in opposition to any attempt to combine the occupational and professional licensing boards serving the citizens of North Dakota. The occupational and professional licensing boards are composed of citizens who are serving citizens. The members of occupational and professional licensing boards are volunteers who are chosen for their expertise in their chosen fields who receive no pay and no benefits, and the expenses for which they are

reimbursed are paid out of funds collected as fees. The representative expressed concern that every two years these volunteer boards are before the Legislative Assembly providing testimony because one or two members of the Legislative Assembly contend that the state has too many boards. The simple statement that "there are too many boards" is not a reason to dismantle a volunteer system that works and costs no money to the state.

A representative of the North Dakota Society for Respiratory Care testified that under the current occupational and professional licensing system the public is very well-protected. Although the committee's study came about in large part because of the disciplinary activities of the Board of Podiatric Medicine, any negative press the board licensing podiatrists received was not warranted. The fact that the Board of Podiatric Medicine brought disciplinary actions against a podiatrist indicates the board performed its duty. The committee received testimony that the committee's study charge limited the study to boards licensing fewer than 100 licensees and did not direct the committee to reorganize the entire structure for occupational and professional licensing boards.

Considerations

The committee considered whether to abolish the Board of Podiatric Medicine and include podiatric licensure as a duty of the State Board of Medical Examiners; whether to make broad sweeping consolidations of several occupational and professional boards; whether lack of adequate funds detrimentally impacted the ability of occupational and professional boards to carry out their duties; and whether the risk management fund should take on the obligation of funding administrative proceedings of occupational and professional boards.

Abolishment of Board of Podiatric Medicine

The committee considered a bill draft that would have abolished the Board of Podiatric Medicine; added podiatric medicine representation on the State Board of Medical Examiners; and required that the State Board of Medical Examiners license podiatrists.

The committee received testimony that drawbacks under the bill draft would be inadequate podiatric medicine representation on the State Board of Medical Examiners, and there would be scope of practice issues for podiatrists as well as transition problems resulting from abolishment of the Board of Podiatric Medicine. Testimony indicated that the bill draft would send the wrong message to occupational and professional licensing boards that perform their disciplinary duties. The bill draft would be perceived as the committee retaliating against the board for doing the board's job.

Consolidation of Occupational and Professional Licensing Boards

The committee considered how several of the state's occupational and professional licensing boards could be consolidated in order to have fewer boards and the

resulting boards would license greater numbers of professionals.

The committee received testimony that most licensing boards exist not for the benefit and protection of the public but instead for the convenience and protection of professionals who control the boards. Additionally, the laws of North Dakota and the rules of the occupational and professional licensing boards unduly restrict out-of-state professionals from entering the state, which in turn makes it difficult for residents of small towns in rural North Dakota to find certain professionals to provide needed services. The committee received testimony that many professions across the country have set uniform requirements that could apply across the country, and that in addition to considering consolidation of boards, the committee could require boards to adopt this approach.

Testimony received by the committee raised the concern that combination of occupational and professional licensing boards would result in one profession overseeing multiple professions and would result in professionals of one profession licensing professionals in different professions. However, the committee also received testimony that the state's current licensure structure includes examples of boards that license more than one profession.

The committee received information regarding how the occupational and professional licensure systems of several states provide for an "umbrella agency" to provide administrative services to and gather information regarding the occupational and professional licensing boards. Benefits of creating such an umbrella agency may include economy of scale, continuity as board membership changes, and standardization of procedure.

Funding Disciplinary Actions

The committee received information regarding an instance in which the Board of Examiners on Audiology and Speech-Language Pathology was unable to pursue disciplinary actions due to lack of the necessary funds. In March 2000 the board requested funding from the Emergency Commission to cover costs associated with a disciplinary action being appealed to the district court. The Emergency Commission denied the board's request, citing concern over the idea of using general fund money to pay for self-funding boards; that the need for funds to perform a board's disciplinary duties was not an emergency; and concern that the board may have been able to access funds in some other manner.

Risk Management Fund

The committee reviewed the history and the basic provisions of the State Tort Claims Act, enacted in 1995. The Act addresses when the state and its employees, including voluntary board members, can be held liable for money damages. The coverage provided under the Act by the risk management fund is limited to payment of damages and associated costs caused by negligence or a wrongful act or omission of the state or a state employee. The fund does not finance an administrative

process initiated by a board or represent or defend state entities in contract actions.

Each state agency, board, and commission is required to participate in the risk management fund by contributing its appropriate share of the fund's costs as determined by the director of the Office of Management and Budget. In the initial creation of the fund, contributions were based on the number of employees of each agency and the number of vehicles owned by the state. Beginning with the 2001-03 biennium the actuarial review factored each agency's fund loss history in determining the level of required contribution. The contribution rate for boards and commissions was set at \$750 per year plus \$115.60 for each full-time employee, with the contribution being waived for any board or commission that has an annual budget of less than \$10,000 and no full-time employee.

The committee received testimony that it would be helpful if the Division of Risk Management would assist in paying claims arising from administrative hearings of occupational and professional licensing boards. However, to expand the role of the risk management fund to include previously excluded acts, such as paying for administrative hearings, would require amending the Act and would require an increase in the amount of the fund in order to accommodate the resulting increased use of the fund.

Conclusion

The committee makes no recommendations with respect to its study of occupational and professional boards that license fewer than 100 licensees.

WORKFORCE STUDY

The committee workforce study included receipt of an inventory of workforce training and development programs, including possible gaps in the system; a review of efforts being undertaken to identify and address underemployment and skills shortages; and a review of how workforce services are accessed.

Legislative Background

Related Studies

Section 2 of Senate Bill No. 2020 required the Department of Commerce Division of Workforce Development to prepare a report annually on workforce training and development activities of the North Dakota University System, Job Service North Dakota, Department of Human Services, State Board for Vocational and Technical Education, Department of Commerce, and other workforce partners and to present the reports to the Appropriations Committees of the 58th Legislative Assembly.

Section 5 of Senate Bill No. 2020 required the North Dakota University System to report during the 2001-02 interim to the Budget Section regarding the amount of workforce training funds raised in each region of the state during the first fiscal year of the biennium and the amount anticipated to be raised before June 30, 2003.

Section 17 of Senate Bill No. 2003 directed a study during the 2001-02 interim of the responsibilities and functions of the College Technical Education Council and the implementation of the workforce training regions, including how the workforce training regions are functioning. This study was conducted by the Legislative Council's interim Higher Education Committee.

Section 18 of Senate Bill No. 2003 directed a study during the 2001-02 interim of the State Board of Higher Education's implementation of the performance and accountability measures report required by Senate Bill No. 2041, including information on education excellence, economic development, student access, student affordability, and financial operations. This study was also conducted by the Legislative Council's interim Higher Education Committee.

Previous Studies and Resulting Bills

During the 1999-2000 interim the Legislative Council's Commerce and Labor Committee studied economic development efforts in the state. The committee reviewed the economic development activities of the Department of Economic Development and Finance, the Division of Community Services, Job Service North Dakota, North Dakota University System, and other state agencies and public and private sector entities. The committee recommendations included:

- Senate Bill No. 2032, which consolidated the Department of Economic Development and Finance, the Division of Community Services, and the Tourism Department to create a Department of Commerce that included a Division of Workforce Development.
- House Bill No. 1043, which would have provided for state payment of certain student loans of graduates of postsecondary educational institutions in the state who were residents of the state and were employed in target industries located in the state. This bill failed to pass the Senate by a vote of 20-29; however, the Legislative Assembly did enact House Bill No. 1283, which provided that the State Board of Higher Education administer a technology student internship and student loan repayment program.

Additionally, the committee worked with the National Conference of State Legislatures in compiling a state inventory of job training programs with a workforce 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, University System, State Board for Vocational and Technical Education, Veterans' Employment and Training Service, and Workers Compensation Bureau provide approximately 40 workforce development programs.

Also, during the 1999-2000 interim the Legislative Council's Higher Education Committee studied higher education funding, including the expectations of the University System in meeting the state's needs in the 21st century. As part of this study the committee formed

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. The committee recommendations included Senate Bill No. 2041, recognizing the institutions under the control of the State Board of Higher Education as the University System, and requiring the State Board of Higher Education to develop a strategic plan that defines the University System goals and objectives and to provide an annual performance and accountability report regarding performance and progress toward the goals and objectives. This bill passed with minor amendments. Additionally, the committee recommended several education financial and nonfinancial accountability measurements, including research and development, economic development, and system accessibility.

During the 1997-98 interim the Legislative Council's Commerce and Agriculture Committee received periodic reports from the State Board for Vocational and Technical Education regarding the agency's progress in coordinating statewide access to workforce training programs. Testimony received indicated in addition to the private sector, the following entities were involved in the coordination of access to workforce training programs: the University System, the Department of Economic Development and Finance, the Workforce Development Council, the Secretary of State, the Labor Commissioner, the State Department of Health, the Department of Corrections and Rehabilitation, the Highway Patrol, Job Service North Dakota, the Department of Human Services, the Superintendent of Public Instruction, the Agriculture Commissioner, the Department of Transportation, the Indian Affairs Commission, the State Board of Plumbing, and the Public Service Commission.

Testimony

Inventory of Workforce Development System

The committee reviewed the federally funded workforce programs available in the state, which are primarily participant-focused; the state-funded workforce programs, which are primarily employer-focused; and the infrastructure workforce training programs, which are state-funded. Workforce programs are offered through a broad range of providers, including the Department of Commerce, the Department of Human Services, Job Service North Dakota, the State Board for Vocational and Technical Education, and the University System. The state-funded workforce programs help fill gaps that exist in federal workforce programs.

Although the state is very close to having a model comprehensive workforce development and training system, testimony was received that the system has gaps within the comprehensive workforce system which would warrant discussion and consideration of new legislation, including funding assistance for the underemployed, warehousing of data and information, community

labor availability, fees for services, permanent fund sources for incumbent worker training, and new Americans initiatives.

Testimony indicated that the Workforce Development Council, Department of Commerce, and partners of the workforce delivery system are working to address gaps in the workforce system and to address issues of workforce shortages and training needs. A workgroup is identifying core data elements to create a community labor availability survey; the Workforce Development Council is working with partners to develop a process to get timely local information on current vacancies, skill shortages, and work and skill requirements to support expansion and business attraction; the Department of Commerce is pursuing a cost-effective on-line employment and resume management system to offer to employers in the state; the Workforce Development Council is creating a data warehousing workgroup to explore the creation of a single point of contact for all core data information on the state's labor force, workforce availability, and job skill requirements; the Workforce Development Council is working with the North Dakota Long Term Care Association on a project designed to identify career ladder training options that could take individuals from entry-level positions in the health care field and provide a career path leading to high-skill and high-pay opportunities; and the Workforce Development Council is involved with New Economy Initiative.

The state has a shortage of accessible short-term training options to allow employed and unemployed workers the opportunity to train for higher-skill opportunities. The committee received testimony that the state had taken some positive steps to address these gaps by coordinating partnerships and coordinating the use of existing funds. The continuation of the public-private partnership grant funds allocated to the Workforce Development Division will help to provide the match funding necessary to continue these coordinated partnerships.

In looking at the gaps in the workforce development services, the committee received testimony that one area of possible consideration would be the provision of a mechanism to create community workforce training foundations. A community workforce training foundation could accept donations and use the donations to establish short-term training programs, develop training and technology centers that could support distance learning, and pay tuition costs for underemployed workers or youth who may want to train for higher-skill jobs available in the community and wish to continue living in the community. The idea of creating a foundation would require further study and may require some startup funding to develop a pilot program.

Testimony received by the committee indicated that employment and underemployment data needed by the North Dakota workforce development system is either nonexistent or is not readily available in large part because the data is not tracked in a centralized and an accessible data base. Accurate data is necessary for

federal grant applications as well as for appropriate utilization of state programs. The data warehouse concept was being explored and developed by the North Dakota Workforce Development Council and partner agencies. This group was working with the Information Technology Department on this issue, and did not yet have recommendations for legislation relating to data collection.

The committee received testimony that the workforce system has failed to adequately provide vocational and workforce training for school-age children. Vocational and workforce training should begin in primary and secondary education and continue with the University System. Concern was voiced that the University System graduates students who do not meet the regions' workforce needs. There is a critical need in the state for primary sector jobs, and workforce training should focus on this primary sector. The committee received testimony that the Career Development Council is currently addressing the issue of career guidance and the need to inform young people of job opportunities in the state. There is a need for vocational education programs and a need to better inform students of vocational job opportunities. National statistics indicate that only 30 percent of jobs require a four-year degree, underscoring the need for vocational training.

The director of the Department of Commerce Division of Workforce Development requested that the committee consider a bill draft to allow the Department of Commerce to retain any fees collected as part of the Internet web site for job opportunities and career guidance. The Department of Commerce provides workforce services through an on-line web page at www.northdakotahajobs.com.

The Department of Commerce proposed a continuing appropriation of the fees collected through the on-line service to allow the site to be self-funded. The major use of funds collected from the subscriptions would be to pay the salary of a full-time administrator of the site, in addition to paying for solicitation of the subscriptions and marketing and advertising the site to North Dakota alumni and people from out of state who are trying to recruit employees for openings within the state. The department's three-year goal is to have \$100,000 in annual subscription fees for the on-line service.

Four Workforce Training Regions

The committee received a status report of the four workforce training regions, including a review of the history and implementation of the laws creating the regions and a review of the workforce training results and accountability measures for workforce training. Testimony was received from representatives of the University System, the Greater North Dakota Association, businesses that have used the services of the regions, the Department of Commerce, individuals who participated in the information gathering as part of the creation of the program, the Economic Development Association of North Dakota, and the universities with primary responsibility for workforce training under the four workforce training regions system.

One strength of the four region workforce training system is that the involvement of several agencies promotes communication between these agencies. Each agency involved in the four region system offers special expertise.

The six key components of the workforce training system are:

1. Creation of four workforce training regions;
2. Assignment of primary responsibility for workforce training in each region to a corresponding two-year college;
3. Creation of a workforce training division within each of the four colleges;
4. Creation of a private sector local advisory board in each of the four regions;
5. Creation of a funding mechanism consisting of fees from training, state funds, and institution in-kind support; and
6. Formation of partnerships with state and local agencies involved in workforce training, public and private education institutions, and private sector training providers.

Testimony indicated that the growth of the program will continue to increase because the program has become a core component of the community colleges, and there is a high demand for program services. Testimony from representatives of businesses that have used the services of the regions supported the program and viewed the program as one way the state can continue to be a good partner with business. Benefits recognized by the businesses in using the workforce training region program include affordability, convenience, flexibility, effectiveness, and responsiveness.

The committee received testimony that one reason for the success of the workforce training region program is that the program is outer-driven. The workforce training region program is very connected with primary sector businesses and primary sector businesses are represented on the board in each of these four regions. Workforce training is part of the economic development package and is included as part of state and local economic development efforts. Using the program as part of the economic development efforts helps to establish trust upfront that workforce training will be available to meet the needs of prospective businesses.

Because all four regions utilize the private sector for providing training services, the program is not competing with private sector workforce training. The University System works closely with New Economy Initiative and the Department of Commerce to better identify workforce needs of the state. Testimony was received that the four workforce training regions help fill the gaps in the workforce training system and therefore are important pieces to the state's entire workforce training system.

The committee received testimony regarding the use of distance learning to provide nurses training. There is a natural link between distance learning and the workforce training regions program. Although distance learning may not be feasible for all fields, the experience of the distance learning for the licensed practical nurses

program provided the state a successful model to use in other areas of worker shortage. Individuals working in distance learning and the workforce training regions program look for ways to increase sharing of information and to recognize ways in which they can improve effectiveness and efficiency.

The presidents of the four institutions of higher education assigned primary responsibilities for workforce training support the repeal of Sections 6 and 7 of Chapter 45 of the 2001 Session Laws. These sections require that effective July 1, 2003, to be eligible to receive state funding for the second fiscal year of each biennium, each institution of higher education assigned primary responsibility for workforce training shall certify that at least 50 percent of the regional funds included in the approved business plan for the biennium have been received or are pledged to be received before the end of the biennium.

Workforce Training and Development Point of Contact

The committee received testimony that there is good communication and cooperation between Job Service North Dakota, the Department of Commerce, and other state agencies. There is a unified state workforce training and development effort. The committee received testimony that North Dakota compares favorably with other states in the offering of a seamless workforce training and development system.

Representatives of the workforce training and development system testified that rather than creating a single point of contact for programs and services delivered through the state's system, the preferred system is a "no wrong door" system, through which the customer may access the entire system through the customer's desired point of contact. Under a no wrong door system, wherever the customer chooses to access the system, that point of contact should develop a coordinated and timely response from the appropriate system partners. In order for a no wrong door system to work, there needs to be formal points of contact identified for each partner and open communication between the partners, something that is already occurring formally in some areas of the state. However, in order to be successful, the partners of the workforce development delivery system will also need to have constant interaction among themselves in order for the system to evolve. Catalysts to create this interaction may include the North Dakota Workforce Development Council, the Department of Commerce Cabinet, and the quadrant interagency councils.

In addition to the no wrong door system, the federal Workforce Investment Act supports the concept of both a physical and a virtual Internet one-stop system in which workforce development partners collaborate and come together to serve the customer with as little disruption and repetition by the customer as possible. North Dakota's one-stop is found at www.crisnd.com. In addition to the virtual one-stop, there are physical one-stop centers in the state.

Recommendation

The committee recommends Senate Bill No. 2030 to allow the Department of Commerce to retain any money received as subscriptions, commissions, or fees from the department's career guidance and job opportunities Internet web site. The bill provides that the funds are appropriated on a continuing basis to fund this Internet web site.

BUSINESS PROGRAMS STUDY

The committee received extensive information and testimony regarding state programs that assist in economic development, including an inventory of programs in the state classified by the appropriate developmental stage of the business for which the program applied. Through this inventory, the committee discussed possible gaps in economic development services available in the state. Additionally, the committee reviewed the investments made by the State Investment Board.

Legislative Background

2001 Legislation

House Bill No. 1042 decreased from \$500,000 to \$250,000 the minimum capital requirements for venture capital corporations and increased from 20 to 25 percent the maximum amount of capital a venture capital corporation may invest in any one qualified entity.

House Bill No. 1052 extended through June 30, 2002, the 1.5 percent sales and use tax rate for used farm machinery and irrigation equipment and farm machinery repair parts and provided that effective July 1, 2002, used farm machinery and irrigation equipment and farm machinery repair parts are exempt from sales and use taxes.

House Bill No. 1400 required the Department of Commerce to manage and administer a rural growth incentive program through which a city with a population of less than 2,500 may be designated as a rural growth incentive city.

House Bill No. 1413 allowed the seed capital investment tax credit to be claimed on the short-form return. The bill reduced from 25 to 10 the number of employees a business must employ and reduced the annual sales requirement from \$250,000 to \$150,000 for a business to qualify for investments under the credit. The bill allowed an organization to be a qualified business if it attracts investments to build and own a value-added agricultural processing facility that it leases with an option to purchase to a primary sector business. The bill eliminated the limitation that the seed capital credit may not exceed 50 percent of the taxpayer's tax liability. The bill increased the aggregate amount of allowable seed capital investment tax credits from \$250,000 to \$1,000,000 through calendar year 2002 and to \$2,500,000 after calendar year 2002.

House Bill No. 1417 authorized the issuance of revenue bonds or other evidences of indebtedness by the Industrial Commission for the establishment of meat-packing plants.

House Bill No. 1460 provided that if the aggregate limit of \$2.5 million in renaissance zone tax credits is exhausted, an additional \$1 million is available for investments if more than 65 percent of the organization's net investments has been invested as permitted under the renaissance zone law or the organization is established after the exhaustion of the initial limit.

Senate Bill No. 2033 revised the renaissance zone law. The bill authorized a city to apply to the Division of Community Services at any time during the duration of a zone to expand a previously approved renaissance zone that is less than 20 square blocks to not more than 20 square blocks. The bill provided that the use of grant funds as the sole source of investment in the purchase of a building or space in a building does not qualify a taxpayer for a tax exemption or credit available to renaissance zone investments, and grant funds may not be counted in determining if the cost of rehabilitation meets or exceeds the current true and full value of a building. The bill also authorized a city to request the Division of Community Services to permit deleting a portion of an approved renaissance zone that is not progressing after five years and make a one-time adjustment of the boundaries to add another equal, contiguous area to the original zone. The bill allowed an income tax exemption and property tax exemption for a taxpayer who rehabilitates residential or commercial property as a zone project. The bill provided that if the cost of a new business purchase or expansion of an existing business, approved as a zone project, exceeds \$75,000, and the business is located in a city with a population of not more than 2,500, an individual taxpayer may elect to take an income tax exemption of up to \$2,000 of personal income tax liability in lieu of the exemption on income derived from the business. The bill removed the December 31, 2004, expiration date for the historic preservation and renovation tax credit for investments made in historic preservation or renovation of property within a renaissance zone. The bill also reduced the credit for historic preservation and renovation from 50 percent of the amount invested to 25 percent of the amount invested, up to a maximum of \$250,000. The bill provided that a taxpayer may not be delinquent in payment of state and local tax liability to be eligible for a tax benefit with respect to investments in a renaissance zone. The bill provided that the provisions relating to the income tax exemptions and property tax exemptions apply to zone projects approved after December 31, 1999, and the provisions relating to the historic preservation and renovation tax credits apply to zone projects approved after July 31, 2001.

Senate Bill No. 2194 provided that in addition to making loans to North Dakota beginning farmers, the Bank of North Dakota may participate in loans to North Dakota beginning farmers and expanded the types of loans covered under the beginning farmers loan program to include loans for the purchase of agricultural equipment and livestock.

Senate Bill No. 2349 increased from \$75,000 to \$100,000 the maximum amount of a loan for which a beginning entrepreneur loan guarantee may be allowed

and increased from \$500,000 to \$4,000,000 the maximum amount of loans that may be outstanding under the program.

Senate Bill No. 2352 provided a sales tax exemption for the purchase of computer and telecommunications equipment that is an integral part of a new primary sector business or a physical or an economic expansion of a primary sector business.

Senate Bill No. 2379 established a value-added agricultural promotion board.

Senate Bill No. 2386 allowed a long-form and short-form individual income tax credit for investment in a cooperative or limited liability company organized to process and market agricultural commodities, having an agricultural commodity processing facility in this state, and having a majority of its ownership interests owned by producers of unprocessed agricultural commodities.

Previous Legislation

In 1999 House Bill No. 1019 appropriated \$750,000 to the Department of Economic Development and Finance for the North Dakota Development Fund, Inc., and provided for ethanol incentives.

In 1999 House Bill No. 1141 eliminated the requirement that the Department of Economic Development and Finance have a division of science and technology.

In 1999 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 from 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 is exempt from income tax 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 is exempt from income tax for five taxable years for income earned from the investment. A historic preservation and renovation tax credit is 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 may 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 may 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 may 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 may 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.

In 1999 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 to five years the time for which the city or county governing body may grant an exemption for building improvements.

In 1999 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 provide 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.

In 1999 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.

In 1997 Senate Bill No. 2019, the appropriation for the Department of Economic Development and Finance, repealed Technology Transfer, Inc., as of July 1, 1999.

In 1997 Senate Bill No. 2019 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, Inc., and its own local development funds. The bill also provided that the Agricultural Products Utilization Commission is now a division of the Department of Economic Development and Finance.

In 1997 Senate Bill No. 2373 provided a framework for investment in community development corporations by banks.

In 1997 Senate Bill No. 2398 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.

In 1997 Senate Bill No. 2396 allowed a corporation or a limited liability company to own and operate the low-risk incentive fund, which makes loans to primary sector businesses.

In 1997 House Bill No. 1401 amended the seed capital investment credit provisions to eliminate the requirement of gross sales receipts of less than

\$2,000,000 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.

In 1995 House Bill No. 1021 replaced the regional rural development revolving loan fund and the North Dakota Future Fund with the North Dakota Development Fund, Inc.

Previous Studies

During the 1999-2000 interim, the Legislative Council's interim Commerce and Labor Committee studied 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. While conducting this study, the committee received extensive testimony from a broad range of state, local, regional, and private sector parties interested in economic development, including the Bank of North Dakota, the Department of Economic Development and Finance, the Division of Community Services, the Indian Affairs Commission, Job Service North Dakota, the University System, the Workforce Development Council, local development associations, the Economic Development Association of North Dakota, the Greater North Dakota Association, job development authorities, regional planning councils, and the Small Business Center. The committee considered the issues of venture capital, privatization and consolidation of state economic development efforts, population retention and demographics, and workforce development. In performing this study, the committee surveyed state agencies to determine the amounts of money being spent for economic development efforts. The committee recommendations included House Bill No. 1039, House Bill No. 1040, House Bill No. 1042, and Senate Bill No. 2032.

During the 1997-98 interim the Legislative Council's interim 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. The study included a review of the most appropriate, effective, and efficient method for the state to deliver economic development assistance in light of changing economic conditions and considerations. While conducting this study the committee received reports from representatives of the Department of Economic Development and Finance regarding the restructuring of the department, loan performance, and the programs administered by the department. The committee received testimony from representatives of the Bank of North Dakota regarding economic development programs administered by the Bank. The committee

received testimony from individuals involved in economic development activities at the local level. The committee made no recommendation with respect to its study.

During the 1993-94 interim the Legislative Council's Jobs Development Commission studied methods and coordination of efforts to initiate and sustain new economic development in this state. The commission made no recommendation with respect to its study.

In 1989 House Concurrent Resolution No. 3004 directed the Legislative Council to establish a jobs development commission to study methods and coordinate efforts to initiate and sustain state economic development and to stimulate the creation of new economic opportunities for the citizens of the state. The Jobs Development Commission worked closely with the North Dakota 2000 Committee, which was formed by the Greater North Dakota Association, and the Governor's Committee of 34, which was a committee of 34 members selected by the Governor for the purpose of developing and implementing a comprehensive economic development legislative program for 1991. The commission recommended several bills relating to economic development, including Senate Bill No. 2058, which provided for a comprehensive economic development program now known as the "Growing North Dakota" program.

Testimony

Department of Commerce - North Dakota Development Fund, Inc.

The committee reviewed fiscal information for the North Dakota Development Fund, Inc., including a projection of the future benefit the state will reap from Development Fund, Inc., projects in 2001 and including the projected rate of return on investments for the current year and preceding three years. The North Dakota Development Fund, Inc., reported a 6 to 7 percent return on investments.

An important element in evaluating the success of North Dakota Development Fund, Inc., is consideration that even if the fund has a 35 percent chargeoff after five to seven years and even if a business does not succeed after five to seven years, the business was in the community and thereby helped the community for those five to seven years.

Department of Commerce - Community Development Block Grant

The committee reviewed fiscal information pertaining to the community development block grant program and the community loan fund. In calendar year 2001 the community development block grant program funded 22 economic development projects for a total of \$3,200,000 with an average of \$145,454 per project. The total capital investment in all projects was in excess of \$31 million. Of the 22 projects, 12 were business startups, 6 were expansions, 2 were purchases of existing businesses, and 2 were designated as job retention. Additionally, the committee reviewed forecasts on

the effect these 22 projects will have on the state's economy over the next four years.

Department of Commerce - Manufacturing Extension Partnership Program

The committee reviewed the economic development services offered through North Dakota's manufacturing extension partnership (MEP) program. The committee received testimony that with the \$400,000 of state funding originally put into the state's program, an additional \$600,000 in federal and private funds had been leveraged. To date, the program had touched 90 companies within the state, with at least 800 employees in the state having seen direct benefit from the program.

The state's MEP program is a nonprofit organization with the mission to "grow North Dakota manufacturing." The North Dakota MEP program is a partnership of federal, state, local, and private sector resources and is one of 70 centers in the MEP program system. The North Dakota MEP program targets its services to help manufacturers and focuses on companies that will create new wealth and opportunity in the community and in the state.

Companies pay for the services they receive through the MEP program and public sector funds provide for the system infrastructure needed to identify and ready manufacturers for improvement. The National Institute of Standards and Technology MEP program and the 70 centers work together to ensure that services provided to manufacturers are of the highest quality. Because the National Institute of Standards and Technology MEP program is a system, North Dakota manufacturers benefit not just from locally available services but from services from the entire system.

The MEP program helps companies with:

- Employee recruitment and selection.
- Employee relations.
- Business and strategic planning.
- Global business development.
- Succession planning.
- Financial services.
- Quality assurance and production control.
- Product design and development.
- Procurement.
- Supply chain management.
- Energy conservation.
- Plant maintenance.
- Lean enterprise.
- Plant layout and design.
- Environment, health, and safety issues.
- Market development, planning, and selling strategies.
- Customer, market, and competitor analysis.
- Information systems planning and software selection.
- E-business.

The North Dakota MEP program submits quarterly reports to the national system and the national system provides for followup with businesses that have received MEP program services. The data reported from the

previous year indicated the average program project results in increased sales per company of \$470,000, cost-savings of \$99,000, new client investment of \$180,634, and the creation or retention of five jobs. Based on this information the Department of Commerce calculated the following additional benefits to the state as a result of the North Dakota MEP program:

North Dakota MEP Program Additional Benefit to State of North Dakota			
	30	40	50
Number of company projects	30	40	50
Total employment	626	831	1,039
Total gross state product	\$29,500,000	\$39,100,000	\$48,900,000
Personal income	\$17,000,000	\$22,800,000	\$28,500,000
State tax revenues	\$3,600,000	\$4,800,000	\$6,000,000

Additionally, the committee received testimony from a representative of a business that used the services of the North Dakota MEP program. The lean enterprise services the company received through the MEP program focused on how to increase the manufacturing of products with the minimal amount of resources. With the lean enterprise assistance, the business was able to increase the number of employees and the number of actual manufactured products as well as operate with less waste and more production, thereby becoming more competitive.

Department of Commerce - Agricultural Products Utilization Commission

The committee reviewed fiscal information pertaining to the Agricultural Products Utilization Commission. The commission administers four grant programs, including basic and applied research, marketing and utilization, farm diversification, and agricultural prototypes. In 2001 the commission received 73 applications requesting a total of over \$3.1 million. Of those 73 applications, 37 projects were funded at a total of \$944,142.

Tax Programs

The committee reviewed the history and use of state tax incentive programs that assist in economic development, including:

1. Venture capital corporation investment tax credit;
2. Small business investment company investment tax credit;
3. Certified nonprofit development corporation investment tax credit;
4. Seed capital investment tax credit;
5. Agricultural commodity processing facility investment tax credit;
6. Renaissance zone;
7. Beginning farmer income tax deduction;
8. Beginning businessperson deduction;
9. Exemption of gain from sale of stock of relocated corporation;
10. Income tax exemptions;
11. Research expense credit;

12. Wage and salary credit;
13. Jobs training assistance;
14. Manufacturing equipment sales and use tax exemption;
15. Agricultural processing plant construction materials sales and use tax exemption;
16. Power plant production equipment and construction materials sales and use tax exemption;
17. Wind-powered electrical generating facilities sales and use tax exemption;
18. Computer and telecommunications equipment sales and use tax exemption;
19. Property tax exemption; and
20. Seed capital investment tax credit.

Bank of North Dakota Programs

The committee reviewed the history and use of Bank of North Dakota programs that assist in economic development, including:

1. Startup entrepreneur program (STEP);
2. Business development loan program;
3. Beginning entrepreneur loan guarantee program;
4. Agriculture partnership in assisting community expansion (Ag PACE) program;
5. Partnership in assisting community expansion (PACE) program; and
6. Match loan program.

The Bank of North Dakota reported a default on loans of approximately \$1.2 million, which is approximately equal to one-tenth of 1 percent of the Bank's loans. This rate of loss is very low compared to the default rate for private banks. This low default rate is due in part to the fact that a majority of the Bank's loans are commercial and that residential loans are largely federally guaranteed.

New Economy Initiative

The committee received testimony regarding the activities of New Economy Initiative. The overall theme of New Economy Initiative is to generate initiatives, each with a champion who establishes a game plan for achieving the initiative. Testimony indicated that New Economy Initiative had more than 70 action initiatives under way to address major challenges such as talent recruitment, capital formation, supporting entrepreneurs, technology training, improving on-line government services, increasing research and development, increasing connections between businesses and universities, and community development.

The organizational structure of New Economy Initiative includes six industry organizations called clusters. The goal of these clusters is to drive growth in the areas in which North Dakota has natural advantages. The 70 existing action initiatives fit within the four broad goals of:

1. Growing competitive clusters;
2. Building strong and responsive economic infrastructure;

3. Creating effective collaboration and dynamic leadership; and
4. Promoting global market focus and openness to change.

New Economy Initiative is developing initiatives to address entrepreneurialism and capital, including:

1. One hundred new economy business challenges;
2. Idea Fest;
3. Statewide talent pool strategy;
4. Investment capital; and
5. University research and technical education.

New Economy Initiative is a project coordinated by the Greater North Dakota Association with the goal to complement the work of the government and help identify ways to make North Dakota a more profitable, dynamic, and desirable location for business and people. As a result of the work being performed by New Economy Initiative, New Economy Initiative will be offering additional initiatives to the Governor and the Legislative Assembly to help make North Dakota more competitive. Additionally, New Economy Initiative has been working with the Department of Commerce to determine how to best coordinate efforts in various areas, including marketing and attraction of workers and companies.

Champion/REAP Alliance

The committee received information regarding the activities of the Champion/REAP Alliance, including receiving testimony from representatives of Champion/REAP alliance communities. The Champion/REAP Alliance is a combined effort of volunteer leaders from the southwestern, southeastern, northern border, and Native American regions of North Dakota. The alliance assists its membership with community and economic development projects, provides a source for regional communication, and helps each area meet obligations as a designated United States Department of Agriculture Champion Community or REAP zone. The primary goal of the alliance is to address outmigration.

Statistics presented to the committee indicated that during the past five years Champion communities leveraged financial resources totaling \$4.2 million, and during the last eight years REAP zones leveraged financial resources totaling \$136.8 million. In 1999 the Legislative Assembly provided \$50,000 in matching funds, and in 2001 the Legislative Assembly provided \$75,000 in matching funds to assist the program.

Business Financing Gaps

The committee reviewed an inventory of economic development programs available in the state to better understand what economic development program gaps might exist in the state. The committee received testimony that the Department of Commerce is working on creating a measuring tool to measure the effectiveness of the economic development programs.

The committee was informed that business funding can be broken up into different stages, such as:

1. Early-stage financing.

- a. Seed financing.
- b. Startup financing.
- c. First-stage financing.
2. Expansion financing.
 - a. Second-stage financing.
 - b. Third-stage financing.
3. Later-stage financing.
 - a. Bridge financing.
 - b. Open market.
4. Acquisition and buyout.
 - a. Acquisition financing.
 - b. Management buyout and leveraged buyout.

A review of the state's economic development programs indicated that the biggest needs in the state are seed financing and startup financing. This lack of funding is a universal problem and is not unique to North Dakota. Testimony indicated there are problems creating investment funds or getting venture capital corporations to invest in the state in part because of the low volume of projects in the state. The committee received testimony that there is not a lack of venture capital funds in the state, but instead the lack of investment is a result of the shortage of "deal flow."

The committee considered whether a large venture capital corporation would be successful in this state, or whether regional funds such as those in Minneapolis would adequately meet the needs in the state. The Department of Commerce created a list of venture capital corporations willing to invest in North Dakota; however, in order to fill the financing gap in North Dakota, the state may need an equity fund and a program to provide startup funds. If the state pursued a program to provide early-stage financing, the program could be administered through a new program or through an existing program such as the North Dakota Development Fund, Inc., or the community development block grant through the community development loan fund.

The North Dakota Development Fund, Inc., has the flexibility to provide funds in the form of loans, equity investments, stock purchases, grants, and guarantees. Reviewing the startup efforts taken by the Department of Commerce, the committee was informed that in 2001 the North Dakota Development Fund, Inc., provided funds for 19 primary sector startups. Of those 19 primary sector startups, seven startups were projects with which both the North Dakota Development Fund, Inc., and Division of Community Services were involved. Of the 19 startups, the Department of Commerce provided nine equity investments.

The North Dakota Development Fund, Inc., worked with some success to try to fill the financing gap, and there is a public role to fill this gap; however, in order to be successful the state needs to be willing to accept the high risks associated with early-stage financing. If the state makes equity investments, the state should be eligible to receive a higher return to reflect the increased risk.

In order for the North Dakota Development Fund, Inc., to be successful in providing early-stage financing, it should be understood and accepted that not every

application for funds is appropriate for funding. The Department of Commerce will continue to provide assistance to projects in order to get to the point when it makes good business sense to provide funding; however, there are times when the answer to the request for funding should be no. Additionally, equity and startup funds are the most risky financing available, so it follows there will be a higher loss associated with these types of financing.

The North Dakota Development Fund, Inc., reported a loss rate of approximately 16 percent, and the community loan fund reported a loss rate of approximately 35 percent. The nature of venture capital funds is that a private fund would expect a rate of return between 25 and 35 percent due to the high risk of loss. A state-administered early-stage financing program could target equity and startups with an understanding that the loss in this account could be as high as 50 to 80 percent. If a company were to accept early-stage financing from the state, one requirement that would be essential to this fund is that the company receiving funds agree to professional management assistance, including a specific amount of advice and counseling during the startup of the company.

State Investment Board

The committee reviewed the composition of the North Dakota State Investment Board; the board's duties; the investment goals, objectives, and asset allocations of the board; the prudent investor rule; and the Teachers' Fund for Retirement and Public Employees Retirement System exclusive benefit requirement, which provides that investments be for the exclusive benefit of the beneficiaries.

The committee received testimony that the State Investment Board supports the advancement of development in the state in several ways, including the Lewis and Clark Private Equities, L.P., in the amount of \$7,500,000; Bank of North Dakota demand deposit in the amount of \$30,438,000; and Bank of North Dakota match loan program with a \$100,000,000 commitment.

Each of the funds managed by the board creates its own investment policy, and the board implements these policies. In addition to investment policy created by the funds, some investment policy is statutory, such as the exclusive benefit rule and prudent investor rule. Occasionally the prudent investor rule complements economic development, such as the MATCH loan program with the Bank of North Dakota. Additionally, the board has \$30 million to \$40 million in a demand deposit account with the Bank of North Dakota and participates in a private equity program with the Public Employees Retirement System and Teachers' Fund for Retirement.

Conclusion

The committee makes no recommendations with respect to its business programs study.

INTERNATIONAL MARKETING AND EXPORT STUDY

In the course of the international marketing and export study, the committee reviewed export statistics for North Dakota and the midwest region, and the committee received testimony from representatives of the Department of Commerce; the Agriculture Commissioner; a representative of the National Association of State Development Agencies; and representatives of North Dakota businesses that are involved in international marketing and exportation. Additionally, the committee requested that the Department of Commerce spearhead an effort to compile an inventory of international marketing and export services available to North Dakota businesses and that the Department of Commerce present to the committee a unified strategic plan for providing international marketing and export services to North Dakota businesses.

Legislative Background

Legislation

In 2001 Senate Bill No. 2032 consolidated the Department of Economic Development and Finance, Department of Tourism, and the Division of Community Services to create a Department of Commerce. This bill was recommended by the Legislative Council's interim Commerce and Labor Committee. As introduced, the bill would have required that the Department of Commerce include a division of international trade; however, this provision was removed from the bill before final passage.

In 1993 Senate Bill No. 2021 removed the requirement that the Department of Economic Development and Finance include a division of marketing and technical assistance.

Previous Studies

During the 1999-2000 interim the Legislative Council's interim Agriculture Committee studied the feasibility and desirability of forming a multistate agricultural marketing commission for the purpose of marketing agricultural products on behalf of agricultural producers.

Testimony

National Association of State Development Agencies

A representative of the Department of Commerce testified that the work the department has done with the National Association of State Development Agencies has resulted in a recommendation from the association that the department include services in the area of international trade.

A representative of the National Association of State Development Agencies testified that the association assisted the Legislative Council's 1999-2000 interim Commerce and Labor Committee in the design of the Department of Commerce and, in doing so, identified areas in which the state could do more with the state's limited resources. Possibilities for increasing export

services range from adding a full-time employee to providing these services with existing staff.

The committee received testimony that small- and medium-sized companies tend to have the greatest potential for increasing exports; however, these same companies are also in need of the most assistance. North Dakota could benefit from a workplan that identifies public and private resources available for these exporters. For purposes of the committee's study, the representative of the National Association of State Development Agencies testified that it would be helpful for the committee to review the existing infrastructures of export service providers in the state and then strengthen these relationships.

Exporters

The committee received testimony from representatives of businesses regarding barriers to international trade and how these businesses have succeeded in overcoming these barriers.

A representative of a North Dakota business testified that North Dakota government agencies can help exporters best by:

1. Financially facilitating agriculture exports by means of tax breaks;
2. Enhancing access to federal low-cost export financing;
3. Providing funding for innovation incubators and business centers;
4. Providing subsidized brick and mortar financing for export products;
5. Funding appropriate market feasibility studies more aggressively; and
6. Providing an information clearinghouse that would include resources concerning domestic and foreign laws and regulations that directly affect exporters.

A representative of a North Dakota business testified that although the state can provide some international trade and marketing assistance to businesses via the Internet, personal contact between the buyer and the seller is very important, and this is especially true in the case of international marketing and exporting.

Agriculture Commissioner

The Agriculture Commissioner testified that the international marketing services offered through the Department of Agriculture and Department of Commerce do not duplicate each other. Although both agencies do have some overlap in the companies with which they work, the agencies offer these companies different services. The commissioner did not support creation of a new board or new agency to head global marketing but instead supported improving coordination between the existing agencies and organizations.

The Agriculture Commissioner testified that the bulk of export activities in the state is in the area of agriculture. These agricultural export activities are primarily in the form of raw agricultural commodities, processed foods, and agricultural equipment. International trade activities of the Department of

Agriculture are centered in the marketing services area, and include:

- Partnership with Mid-America International Trade Council (MIATCO), which is primarily composed of 12 state departments of agriculture in the midwest region. In addition to the contacts and special relations gained through MIATCO, MIATCO provides an export hotline, Food Show Plus, and a branded program.
- Close relationships with the state commodity councils and funds.
- Membership of the commissioner as MIATCO president, as a member of Agricultural Products Utilization Commission; as a member of the Northern Crops Institute Board of Directors; as a member of the State Seed Commission; and as a member of the Industrial Commission, which oversees the State Mill and Elevator Association.
- Provision of direct services with North Dakota companies, including conducting educational seminars, researching potential markets, providing financial assistance for companies to attend international trade shows, encouraging and hosting reverse trade missions, organizing North Dakota companies for foreign visits, following up on international trade inquiries, and providing networking services between North Dakota companies and export providers.

The Agriculture Commissioner reported there are several ways the Department of Agriculture and the Department of Commerce can work together on international trade, including improving coordination of services; sharing information between agencies; and creating some type of international marketing and export relationship between the Department of Agriculture, the Department of Commerce, and the University System.

Department of Commerce

The committee received testimony from representatives of the Department of Commerce regarding the international marketing and export services provided through the department. Under the current system, international trade is an area that is grossly underdeveloped in North Dakota's economic development services. Testimony was received that although the Department of Commerce has tried to take an active role in international trade, when the department receives requests for international marketing and export services, one of the main roles the department plays is to act as a clearinghouse in referring callers to other service providers, including the United States Department of Commerce office in Minneapolis and the North Dakota District Export Council. Requests for international marketing and export information received by the Department of Commerce include requests for background information on specific countries, assistance in completing paperwork, information regarding international trade brokers, North Dakota export statistics, and due diligence information.

Inventory and Unified Strategic Plan

With the assistance of the District Export Council, the Department of Commerce compiled an inventory of public and private export service providers available to North Dakota businesses. At the request of the committee the department formed the following departmental strategic plan for unified international marketing and export services:

1. Coordinate and cooperate with all current international program service providers within the state.
2. Act as a liaison to companies wanting information on international business and to the providers of those services.
3. Work closely with the United States Department of Commerce and provide knowledge of programs and assistance.
4. Provide hands-on assistance to private businesses to get these businesses "export-ready."
5. Work closely with the North Dakota Export Council to find prospective companies that need export assistance.
6. Work with other Department of Commerce programs, such as the Agricultural Products Utilization Commission and the Manufacturing Extension Partnership, to provide education on international markets and products.
7. As needed, work with all entities to provide educational opportunities for companies that choose to consider the possibility of exporting.
8. Work with businesses on international business investment.
9. Work closely with other entities, such as the State Board of Higher Education, MEP, United States Department of Commerce, District Export Council, and others to:
 - a. Determine international customers' wants and needs.
 - b. Gather competitor intelligence.
 - c. Identify new markets.
 - d. Assist with customer-driven product development.
 - e. Select the most effective distribution channels.
10. Market the Export-Import Bank of the United States programs to North Dakota exporters.

The commissioner of the Department of Commerce testified that a person with international experience must provide the leadership and focus necessary to implement the strategic plan and move North Dakota exports forward. The estimated biennial costs for hiring a global business and marketing director and one full-time employee to provide support services would be \$336,997, providing for an annual director's salary of \$45,000, and an annual administrative support salary of \$25,824.

Conclusion

The committee makes no recommendations with respect to its international marketing study.

REPORTS

Department of Commerce Division of Community Services Renaissance Zone Annual Reports

The committee received annual reports from the Department of Commerce Division of Community Services on renaissance zone progress. The committee received updates on:

- The status of the approved renaissance zones and the projects within each of these approved zones;
- The activities of renaissance fund organizations;
- The status of zones in the process of receiving renaissance zone approval; and
- Communities that may be applying for renaissance zone status in the future.

The Division of Community Services did not recommend any changes to the renaissance zone program.

Securities Commissioner's Access to Capital Report

The committee received a report from the Securities Commissioner on the commissioner's findings and recommendations resulting from the review of policies and procedures relating to access to capital for North Dakota companies. The commissioner reported that the commissioner's primary charge is protection of North Dakota investors through four functional areas:

1. Investor education and financial literacy initiatives;
2. Investigation and enforcement;
3. Registration of securities industry firms and professionals; and
4. Regulation of the capital formation process.

The commissioner reviewed amendments made to the North Dakota Securities Act of 1951 over the last three legislative sessions and provided the committee with a summary of the filing activities addressed by the commissioner's office for the first half of the current biennium.

The commissioner will introduce during the 2003 legislative session a bill to expand an exemption from the registration requirements to allow companies to offer and sell securities to any government or political subdivision or instrumentality and to small business investment corporations.

Workers Compensation Bureau Roughrider Industries Safety Audit and Modified Workers' Compensation Coverage Performance Audit Report

The committee received a report from the Workers Compensation Bureau on the safety audit of Roughrider Industries work programs and the performance audit of the modified workers' compensation coverage program. The modified workers' compensation program was established in 1997 to allow Roughrider Industries to continue receiving federal funding through the prison industry enhancement certification program.

As the result of a June 2002 safety audit of Roughrider Industries, the Workers Compensation Bureau found that Roughrider Industries was in compliance with all components of the workers' compensation risk management program. Additionally, the audit showed that Roughrider Industries had incorporated modern safety devices at the manufacturing plant to provide the greatest protection to workers when utilized properly.

However, the internal audit indicated that Roughrider Industries had not been providing the Workers Compensation Bureau with documentation of reinsurance coverage. Procedures have been established to ensure receipt of this documentation.

The Workers Compensation Bureau did not recommend any changes to the modified workers' compensation program in place at Roughrider Industries.

CORRECTIONS COMMITTEE

The Corrections Committee was assigned two studies. Section 5 of Senate Bill No. 2016 directed a study of the facilities and operations of the Department of Corrections and Rehabilitation. Section 5 required that the study was to include the use of consultant services. Section 5 also required that the study include an analysis and evaluation of all current facilities used by the department, the future facility needs, the staffing needs of the department, the anticipated need for additional prison beds, and a cost-benefit analysis of the department's current and proposed programs. Senate Concurrent Resolution No. 4018 directed a study of the commitment procedures contained in North Dakota Century Code (NDCC) Chapter 25-03.1 and the commitment laws from other states to determine if North Dakota law sufficiently addresses the treatment needs of controlled substance abusers in this state, to study the mandatory minimum sentence requirements of NDCC Chapter 19-03.1 and the mandatory minimum sentencing laws from other states and the federal government relating to drug offenses, and to study the need for legislation to assist in the cooperative efforts of state, local, and federal agencies to combat unlawful drug use and abuse in this state. The Legislative Council also assigned to the committee the responsibility to receive a report, pursuant to Section 19-03.1-44, from the Attorney General on the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in this state.

Committee members were Representatives Duane DeKrey (Chairman), Ron Carlisle, Howard Grumbo, Gil Herbel, George Keiser, Joe Kroeber, John Mahoney, Ken Svedjan, Laurel Thoreson, John M. Warner, and Amy Warnke and Senators Dick Dever, Jerome Kelsh, Stanley W. Lyson, Carolyn Nelson, Dave Nething, and Darlene Watne.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2002. The Council accepted the report for submission to the 58th Legislative Assembly.

CORRECTIONAL SYSTEM STUDY

Background

The Department of Corrections and Rehabilitation includes two major divisions—the Adult Services Division and the Division of Juvenile Services. Within each division is an institutional division and a community division. Therefore, the four areas the Department of Corrections and Rehabilitation oversees are the Prisons Division (North Dakota State Penitentiary, James River Correctional Center, and Missouri River Correctional Center), the Field Services Division (adult parole and probation across the state), the North Dakota Youth Correctional Center, and Juvenile Community Services.

The State Penitentiary in eastern Bismarck is the main prison complex and houses maximum security inmates as well as some medium security inmates. The James River Correctional Center at Jamestown is

designed to hold medium security male inmates and has the bulk of the women inmates. The Missouri River Correctional Center in southwest Bismarck houses minimum security male and female inmates. The Revocation Center, located at the Stutsman County Correctional Center, is managed through the department's Field Services Division, and houses both inmates and noninmates. Other inmates may be held in local correctional centers, in the community placement program, and in other states through the interstate compact program.

State Penitentiary

North Dakota Century Code Section 12-47-01 provides for the establishment of the State Penitentiary. The State Penitentiary, which was founded in 1885, is 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 include 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. 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 slaughterhouse, 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 lands, its property, and its inmates. The warden is responsible for the policing of the Penitentiary and the discipline of the inmates.

James River Correctional Center

The James River Correctional Center (JRCC), which is located on the grounds of the State Hospital in Jamestown, was completed for use as a correctional facility in 1998. The JRCC contains three units for its inmate population. The second floor of the center is a medium security male unit with dormitory-style cells and an inmate capacity of 160. The female unit, which is located on the third and fourth floors, is a medium security, dormitory-style unit that has a capacity of 80. The JRCC also includes a newly constructed building for Roughrider Industries. The JRCC uses the building previously called the Forensic Unit to house mentally ill

inmates and those requiring segregation from the male population for safety reasons.

Missouri River Correctional Center

The Missouri River Correctional Center (MRCC) is located eight miles south of Bismarck near the Missouri River. The MRCC 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 MRCC 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 MRCC include a minimum security, dormitory-style housing unit for male inmates which has a capacity of 136. In addition, there is a minimum security, dormitory-style housing unit for female inmates with a capacity of 14. The administration of the MRCC is under the jurisdiction of the warden of the State Penitentiary, but a manager lives onsite and conducts the day-to-day administration.

Among the education programs offered to the inmates of the MRCC are included 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.

Field Services Division

The Field Services Division has offices across the state staffed by parole and probation officers. The division manages offenders sentenced to supervision by a court, released to parole by the Parole Board, sent to community placement by the director, and placed at the Revocation Center. The division staff supervise offender compliance with the supervision conditions and provide cognitive behavioral and other forms of counseling services. The division also manages the victims services program to help mitigate the suffering of crime victims by providing fiscal support and services to crime victims.

Division of Juvenile Services

The Community Services Division of the Division of Juvenile Services has nine satellite offices serving the eight human services regions across the state and is staffed to provide supervision to juveniles committed by the courts. The division's case managers supervise about 500 juveniles per day. Approximately 40 percent of those juveniles are in their homes, 25 percent are in residential foster care or group homes, eight percent are in therapeutic foster care or in individual homes, and 12 percent are institutionalized.

The Division of Juvenile Services also oversees the North Dakota Youth Correctional Center. The Youth Correctional Center, located south of Mandan, is the state's secure juvenile correctional institution. The Youth Correctional Center serves as a secure detention and

rehabilitation facility for adjudicated juveniles who require the most restrictive placement and maximum staff supervision and which provides appropriate programming to address delinquent behavior. The basic mission of the Youth Correctional Center is to protect society while providing education and therapeutic services to troubled adolescents within a safe and secure environment. Juvenile programming at the Youth Correctional Center includes drug and alcohol programming, child psychiatric and psychological services, a pretreatment program for sex offenders, a special management program for juveniles who are difficult to manage, and a security intervention group program to inform, educate, and provide juveniles with alternatives to gang activity and gang affiliation. The Youth Correctional Center provides adjudicated adolescents an opportunity to complete or progress toward completing their education coursework while in residence. There are typically about 90 juveniles at the center with 70 to 75 in treatment and the remainder divided between detention, evaluation, and time-out.

Consultant Services and Methodology

Section 6 of Senate Bill No. 2016 provided for an appropriation of \$200,000 for the purpose of contracting with a consultant to conduct the study of the facilities and operations of the Department of Corrections and Rehabilitation. The committee received proposals from two companies that specialized in studies of correctional facilities, both of which were recommended by the National Institute for Corrections. The committee selected and contracted with Security Response Technologies, Inc. (SRT), a consulting company based in Middleton, Massachusetts. Security Response Technologies, Inc. began its work on December 1, 2001, and concluded the study with the presentation of a final report to the committee on June 27, 2002.

The consultant's project team gathered information to evaluate the department's current facilities, assess the department's future capacity needs, examine its current operations, and analyze its programs. The project team spent over 1,200 hours over the course of six trips to North Dakota collecting data. The team used the following techniques to collect data:

1. The consultant reviewed internal and published documents regarding the operations, programs, and facilities of the Department of Corrections and Rehabilitation to obtain information pertinent to the project.
2. The consultant's team toured the institutions by conducting extensive, repeated inspections at each of the department's primary facilities, including the Penitentiary, the JRCC, the MRCC, and the Youth Correctional Center. Each facility was toured a minimum of three times. Initial tours were conducted to gain a general orientation on the layout and operation of each facility. In subsequent visits the members of the project team personally

inspected each building and building system at these institutions.

3. The consultant's team conducted formal interviews with 33 department managers. In many cases multiple sessions were held with individuals to revisit specific points of inquiry. In addition, the team conducted numerous informal interviews with both staff and inmates during the course of facility tours. Team members discussed facility operations with staff on every shift at each facility in order to establish a comprehensive view of issues at each institution. In addition, interviews were conducted with state's attorneys, members of the Legislative Assembly, and the Chief Justice of the Supreme Court in order to gain a broader perspective of the department.
4. The consultant's team analyzed data on characteristics of the offender population provided by the department's information management system, as well as data tracked by the department's Office of Planning, to identify the key issues facing the department in each of the areas of capacity planning, offender programs, facility operations, and physical plant assessment.

The committee, together with members of the consultant's team and members of the Budget Tour Group, toured the facilities at the State Penitentiary, Roughrider Industries, the James River Correctional Center (JRCC), the Missouri River Correctional Center (MRCC), the Youth Correctional Center, and the State Hospital. The committee received testimony that the number of inmates as of December 1, 2001, was 1,127, which consisted of 535 inmates at the State Penitentiary, 342 inmates at the JRCC, 139 inmates at the MRCC, 11 inmates in county jails, 18 inmates at the Thompkins Rehabilitation and Corrections Unit (TRCU), 13 inmates at the DUI offender treatment center at the State Hospital, 34 inmates in community placement programs, and 35 inmates at a private correctional facility in Appleton, Minnesota. The committee also received testimony that the number of mentally ill inmates is an area of concern for the department. During the past 23 months, 710 inmates received contracted psychiatric care. It was reported that 33 percent of all inmates under the care of the department are receiving psychiatric care. It was noted that mentally ill inmates account for 78 percent of serious behavior incidents. The committee also received testimony that a need exists at the MRCC for a new food service and multipurpose facility to replace the current food service building. During the tour of the Youth Correctional Center, the committee received testimony that mental health problems are an increasing problem with the students sentenced to the facility. It was noted that about 80 percent of all students at the center are male and that about 80 percent of all students have some type of drug or alcohol problem. Testimony received during the tour of the JRCC indicated that housing women and men together in the same facility

has created numerous problems. According to the testimony, the situation forces the department to operate the medium security facility with maximum security procedures to protect the female inmates from the male inmates. The testimony indicated that the construction of a new women's unit at a separate location at the JRCC would eliminate many of these problems.

Consultant Findings and Recommendations

This portion of the report presents the findings and recommendations of the consultant's study of the Department of Corrections and Rehabilitation as well as the response of the department to those recommendations. The consultant's report included findings and recommendations in the following areas: population and capacity management, physical plant, operations, and programs.

Population and Capacity Management Findings

According to the findings of the consultant, the state's correctional system is operating at or near the limit of its current capacity. With only 971 readily available prison beds, the department is managing over 1,100 inmates, forcing it to rely upon contracted beds in county jails and the privately operated correctional facility located in Appleton, Minnesota. Available capacity to house female offenders is a particularly critical issue.

The inmate population will continue to grow. The consultant's projections indicate that the number of inmates in the North Dakota prison system will continue to grow by approximately 3 percent annually, resulting in an additional 415 offenders by the year 2012. The female offender population will grow even faster, adding 84 inmates over the next 10 years, a 67 percent increase over the current population. Although North Dakota has not experienced an increase in its overall population, the inmate population is projected to increase because of the anticipated increase in drug crimes, especially methamphetamine-related drug crimes, because of the decline in the rate of parole, and because of the state's sentencing practices.

Recommendations

To resolve the population and capacity management concerns, the consultant recommended the following:

- Expand the corrections rehabilitation and recovery program by an additional 25 beds for female offenders. This initiative is currently under negotiation with the State Hospital and would provide some of the additional capacity needed for the female population.
- Increase contracting with county jails and the Prairie Correctional Facility in Appleton, Minnesota, as needed over the next year. Although expensive, the contractual beds provide additional capacity to manage short-term population growth.
- Accelerate parole reviews of eligible offenders. North Dakota paroles offenders later in their

prison term than virtually any other state. By following the same pattern in the timing of parole decisions found nationally, projected prison population growth would be reduced by 45 percent over the next 10 years.

- Build a new housing unit for female inmates at the JRCC. Construction of a 180-bed unit would provide sufficient capacity to manage the female population for the foreseeable future and provide an effective solution to many of the current problems experienced by the department in managing female offenders. The construction of such a facility would also free up 114 beds currently utilized by females for males, providing significant additional capacity to address projected male population growth.

According to the consultant, the implementation of these recommendations will allow the department to address its current capacity problems and manage projected prison population growth in a responsible, cost-effective manner.

In response to committee concerns about the recommended location for a new women's facility, the consultant testified that the JRCC was recommended for a new female unit over the MRCC because the MRCC lacks a secure perimeter, does not have medical services, and has other infrastructure issues. For these reasons, it would be more costly to build a new women's facility at the MRCC. The projected cost of a new female unit was \$11,494,829, which includes the general housing unit, a multipurpose visitation and recreation area, medical services, and academic and vocational programming. According to the consultant, there is not a significant difference in the labor force in Jamestown and Bismarck and adequate services are available in both cities. It was noted that the JRCC has a staff that is already trained in working with female offenders. It was also noted that the JRCC has a power plant and that the road access is better at the JRCC than at the MRCC. According to the testimony, locating the new facility at the MRCC would also require the need to build up the physical plant, the access road, and the parking, all of which are already in place at the JRCC. According to the testimony the MRCC is also limited on the amount of public water it can purchase and use. That problem could be overcome by the addition of a water tower, however, that would add \$500,000 to the cost of the project. In response to a committee member's suggestion that the 900 acres surrounding the MRCC could be sold to help offset the cost of building the facility, the consultant noted it is not likely developers would want to build a residential development around a correctional facility.

According to the testimony of the consultants, the disparate treatment of female inmates could become a litigation issue. According to the testimony the two primary issues that lead to Department of Justice investigations of prisons are the treatment of the mentally ill and the treatment of female offenders. The testimony indicated that the Department of Justice has been very aggressive throughout the country in investigating the

disparate treatment of females in prisons. It was noted that Michigan has been involved in litigation over similar issues for the past 25 years. According to the testimony North Dakota has clear issues regarding its female inmates which need to be addressed. The testimony indicated that these issues have arisen due in part to the rapid growth of the state's female inmate population and the lack of adequate programs and facilities.

In response to committee concerns regarding the feasibility of contracting with a private prison company to provide prison beds for the female inmates or for a portion or all of the male inmate population, the consultant indicated that large-scale privatization is not feasible for North Dakota. The testimony indicated that contracting for an entire facility requires the state to pay for more beds than it may need. It was projected that privatization would result in increased state spending on corrections due to the department's need to continue to cover its fixed costs.

Several members of the committee expressed concern that the consultant's report did not include a full assessment of prison privatization in the state. According to the committee members, the privatization option should have been explored further.

Another committee member expressed concern that the consultant did not adequately explore the option of a fully integrated single-unit system. According to the concerns, the experts did not give their vision of long-term ways to maximize the return on the investment of the state's taxpayers.

Department's Response

Regarding the consultant's recommendation that the corrections rehabilitation and recovery program be expanded, the committee received testimony from the Department of Corrections and Rehabilitation that the department, in its 2003-05 budget request, has requested new treatment staff positions to provide adequate treatment for the female offenders in the new women's unit. According to the testimony the treatment will be structured to specifically meet the needs of female offenders. Regarding the consultant's recommendation to increase contracting with county jails and the Appleton, Minnesota, facility as needed over the next year, the department testified that the department does not anticipate it will need to increase contracting for housing outside of the department's facilities. With the addition of a new women's unit and implementation of the more aggressive parole process, the department will need fewer contract beds.

Regarding the recommendation to accelerate parole reviews of eligible offenders, the department testified that the acceleration of parole reviews of eligible offenders has been implemented. According to the testimony, on average, offenders can be paroled approximately 120 days longer than they were in 2001. According to the department the aggressive parole process will identify a few more offenders for parole each month than was the case in 2001. The testimony indicated that the department is already seeing a small impact of the implemented changes. According to the

testimony the department's cost analysis indicates the aggressive parole planning will result in a \$2,686,277 savings during the next biennium. The department estimated that if the Parole Board is able to continue the more aggressive paroling process, the inmate population will be 1,160 by July 1, 2003, rather than the 1,260 as indicated in the consultant's projections.

According to the testimony the department has been very conservative in its parole recommendations. It was noted the Parole Board relies heavily on the recommendations of the department. The testimony indicated that in developing the aggressive parole process, the department looked at the average sentence served, which is 22 months. According to the testimony the department will be able to reduce the orientation process to three to four weeks rather than five weeks. Consequently, based on the time it takes to meet an inmate's treatment needs and the reduced orientation process, the average sentence can be reduced by 120 days. According to the department, research indicates that, upon the successful completion of treatment, moving an offender back into the community with aftercare supervision gives that offender the best chance of succeeding in society. It was noted that state's attorneys and judges get notice for all offenders appearing before the Parole Board. According to the department, not more than 60 parolees should be assigned to a parole officer. The department indicated it will be requesting an additional parole officer for each 60 persons added to parole.

The committee also received testimony from representatives of the Parole Board. According to the testimony, about the same number of offenders were paroled in 2001 as were paroled in 1990. In 1990, however, there were 475 inmates in the prison population compared to over 1,100 in 2001.

The department also testified it investigated all options for a new facility for housing female inmates. According to the testimony, in response to the consultant's recommendation, the department researched four options. The four options were to renovate the MRCC, build a new facility at the JRCC, build a new facility at the Penitentiary, and build a new facility in Fargo. Based upon the consultant's recommendation and the department's strategic planning process, the department testified it appears that the best and most economical location for the new women's unit is at the JRCC. It was noted that the MRCC is not adequate for expansion. According to the testimony the MRCC is a minimum security facility that does not have a fence around the perimeter, the inmates do not have constant supervision, and housing all women at the MRCC would make it difficult to keep the male and female inmates apart.

The department also testified that it had contacted the two major private prison corporations, Corrections Corporation of America and Wackenhutt Corrections Corporation. According to the testimony, to get an accurate estimate from these companies, a detailed request for proposal (RFP) would be needed. The testimony indicated it would take 30 to 60 days to prepare the RFP and another 30 to 60 days for the companies to respond.

The department indicated it has been working with the State Hospital on a plan to utilize some of the State Hospital facilities for prison use, including the food service and laundry areas.

Physical Plant

Findings

According to the consultant's findings, the primary facilities at the department's four major institutions--the Penitentiary, the JRCC, the MRCC, and the Youth Correctional Center--are largely in sound condition. With a reasonable investment in maintenance, each of these facilities can continue to be used effectively for the foreseeable future. It was also noted that all of the facilities of the department are very clean and well-maintained. According to the consultant, a clean facility is usually an indication that the facility is well-managed.

Each institution's physical plant currently has or can be expected to develop issues that will need to be addressed. To assure the efficient use of these facilities, the consultant recommended that the department, in consultation with the executive and the legislative branches, prioritize and fund work to address these issues.

Recommendations

With respect to the physical plant, the consultant recommended the following:

- Invest an estimated \$42 to \$62 million in major capital repairs to the four facilities over the next 10 years. Major projects that need to be pursued during this time period include a new dietary building at the MRCC; a new female housing unit at the JRCC; a new Penitentiary gatehouse; a fire alarm system at the Youth Correctional Center; replacement of the Penitentiary east cellhouse; and other roofing and infrastructure projects.
- Invest \$14 to \$21 million in facility maintenance over the next 10 years. This amount is based on the replacement value of the facilities and includes routine maintenance, minor capital repair, and the cost of contracts and salaries for maintenance staff.

According to the testimony the women's facility should be the top priority followed by the gatehouse at the Penitentiary. It was advised that in any construction project undertaken, it is important that the architects hired have experience in correctional facility design.

Department's Response

Regarding the recommendation that the department needs to invest an estimated \$42 to \$62 million in major capital repairs to the four facilities over the next 10 years, the committee received testimony that the department agreed with this assessment. According to the testimony the new female housing unit, the MRCC dietary building, and the fire alarm system at the Youth Correctional Center are the most urgent. The department also agreed with the consultant's recommendation

that the department needs to invest \$14 to \$21 million in facility maintenance over the next 10 years.

Operations

Findings

According to the consultant's findings, the department does not utilize a master roster or relief factor system. As a result, it is difficult for the department to justify its staffing needs to the Legislative Assembly and equally difficult for the Legislative Assembly to discern the department's needs to appropriate sufficient resources to meet those needs. The development of a good master roster begins with a post analysis and a calculation of the relief factor based upon the actual number of personnel required to staff a function complete with post coverage on days off, sick days, vacation, and other types of absences. According to the findings, over the years the department has underestimated its true staffing needs and opted instead to request only what it believes the Legislative Assembly will support. The result has been a staffing process that is based more on personalities and politics than on objective assessment tools. The consultant calculated a relief factor for the Penitentiary, which includes the MRCC and the JRCC. The consultant conducted a post analysis for each post on every shift, and the resulting posts were then applied to a master roster. The relief factor was then applied to the posts and the roster and the number of personnel required for each function was then calculated. The calculations showed the Penitentiary to have a seven-day relief factor of 1.62 and the JRCC to have a seven-day relief factor of 1.55.

Recommendations

The consultant recommended staff increases of 15.5 full-time equivalent (FTE) positions at the Penitentiary, 30.7 FTE positions at the JRCC, 4.0 FTE positions at the MRCC, and 1.0 FTE position at the central office to enhance safety and security. The recommendations for the Penitentiary included a recommendation that one of the two deputy warden positions be converted to a warden position and the combined director of Prison Division/Warden position be split into two separate positions.

Regarding the major staffing deficiencies at the JRCC, the consultant recommended an additional 30.7 FTE positions in the areas of security, administration, maintenance, and education. It was noted that the JRCC relies on a maintenance agreement with the State Hospital for most of its maintenance needs, but because the JRCC is a high-maintenance facility, it needs its own maintenance staff. It was also noted that two areas at the MRCC, the visiting room and the overnight shift, need to be addressed. It was pointed out that the visiting room is a prime location for the exchange of contraband, and it is essential that well-trained officers staff this function. It was noted that as the system grows and becomes more complex, the staffing issues raised in the report will need to be addressed. According to the

testimony the Penitentiary and the JRCC are very staff intensive because of each facility's design.

It was also recommended that the department develop or acquire an information system for Field Services Division which can communicate with the Prison Division's ITAG system. Finally, it was recommended that the department integrate the policies and procedures of its various divisions into one policy manual and formalize an audit system to test policy compliance.

Department's Response

Regarding the consultant's operations recommendations, the committee received testimony from the department that it agreed that additional staff are necessary to assure security and to operate in an effective manner. The department will include these new FTE positions in its 2003-05 budget request. The department also agreed the position of warden of the Penitentiary and the position of the director of the Prisons Division should be separated. However, the department has concerns about eliminating one of the deputy warden positions at this time.

The department agreed with the recommendation that the department needs to develop or acquire an information system for the Field Services Division which can communicate with the Prison Division's ITAG system. However, the cost to integrate the two systems has been prohibitive. The testimony indicated the estimated cost to accomplish this in 2000 was over \$800,000. According to the testimony the department will pursue this if the costs of integration decrease or if funding becomes available through grant sources.

Regarding the consultant's recommendation that the department integrate the policies and procedures of its various divisions into one policy manual and formalize an audit system to test policy compliance, the department responded that it will work toward this recommendation; however, it is not a priority at this time. According to testimony the department has a common personnel policy manual. Because the Division of Juvenile Services, Prisons Division, and Field Services Division policies, by necessity, are often different, integrating the policies into one policy manual would be very cumbersome.

Programs

Findings

The findings of the consultant regarding the department's programs are as follows:

- The department lacks minimally adequate vocational training programs. Elimination of federal funding has resulted in a severe deterioration of the department's vocational training programs.
- The classification instrument utilized by the department was developed in 1983 and has not been validated since its inception. The classification system has evolved considerably since its inception, changing in response to the types of issues facing the department.
- The present intake process at the Penitentiary is completed in five weeks from the time of

admission. This represents an extremely long amount of time to complete the classification process.

- Female offenders do not have adequate access to programs. The coeducational housing system and general lack of program opportunities at the JRCC have had the effect of diminishing access of female offenders to program opportunities relative to male offenders in the system.

Recommendations

With respect to the findings regarding programming, the consultant recommended the following:

- Increase educational programming at the JRCC. Two additional instructors and improved facilities are needed to increase access to educational programming. This is a particularly critical issue for the female inmates at the JRCC.
- Expand vocational training programs. This will aid in the rehabilitation of offenders. The development of vocational programming for females is essential in order to assure equal access to programs.
- Accelerate the processing of offenders through classification. More timely processing will speed the assignment of offenders into programs, shortening the amount of time an offender must wait before a parole hearing.
- Review and validate the classification instrument. It is essential that any classification instrument be valid and reliable in order to assure the appropriate placement of offenders into housing and programs. A classification system specifically designed for females should be developed or acquired.
- Explore expansion of the community placement program. Relative to other states, North Dakota underutilizes supervised management of inmates placed in the community. Based on the size and composition of the inmate population, the department should have no difficulty identifying additional low-risk inmates for this program.

Department's Response

The department agreed with the recommendation to increase educational programming at the JRCC. According to the department's testimony, improved access and adequate facilities for educational programming can be accomplished with the construction of a new women's unit and through the acquisition of the laundry and food service space from the State Hospital.

Regarding the consultant's recommendation to expand vocational training programs, the department will include a request in its 2003-05 budget request for additional vocational programming for inmates. Regarding the consultant's recommendation of the acceleration of the processing of offenders through classification, the testimony indicated the department is in the process of implementing this proposal. Under the accelerated

process, inmates will be processed in three to four weeks rather than in five weeks.

In response to the consultant's recommendation that the classification instrument be reviewed and validated, the department testified it has submitted a request to the National Institute of Corrections to provide the technical assistance necessary to validate the classification instrument used by the Prisons Division. Regarding the consultant's recommendation to explore the expansion of the community placement program, the department indicated it has some concerns about expanding the program. It was noted that the newly operational Transition Center has taken 50 additional inmates out of the population and placed them in a community program. According to the testimony the department will continue to place eligible candidates in the community placement program. However, the department is concerned that placing additional inmates in the community placement program may not be in the best interest of public safety.

Privatization of Prison Facilities

In addition to the assessment of the consultant regarding the feasibility of privatizing prison facilities in the state, the committee received presentations from two private prison corporations, Wackenhutt Corrections Corporation (WCC) and Corrections Corporation of America (CCA), both of which operate private prison facilities throughout the country.

According to testimony received from WCC, the company has 56 facilities under contract worldwide with over 40,000 beds. The testimony indicated one of the advantages of privatization of correctional facilities is the ability to be innovative, creative, and flexible. According to the testimony, privatization also provides a cost-savings. It was estimated that a state can save 15 to 20 percent in the construction phase and about 10 percent annually in operating costs. The testimony indicated that privatization reduces the liability of the contracting agency. According to the testimony, 25 percent of the correctional facilities in Oklahoma are privatized, and Texas has more than 30 private correctional facilities. The testimony indicated that another advantage of privatization of correctional facilities is that more project financing options are available to the private sector than are available to the state. Privatization, it was noted, also provides for corporate oversight and responsibility. A publicly traded company must be accountable. According to the testimony, when designing new facilities, a company's objective is to meet the operational needs of the client.

The testimony indicated that WCC builds facilities based on the needs of the client and on the requirements set forth in the RFP and the contract. The facilities are built with a design that can be expanded if needed. According to the testimony the smallest facility operated by WCC is 200 beds. The company's testimony indicated that it will design a facility that meets the state's needs and that a contract can be written so that the state will only pay for those beds that are needed.

According to the testimony both minimum and maximum security inmates can be housed in the same facility. This can be accomplished by compartmentalizing the facility. Because of management problems, it is not recommended that males and females be housed at the same facility. According to the testimony the average cost per day in this region is \$42. It was noted that the per day cost includes programming. The testimony indicated that the typical amount of time from RFP to a facility being operational is about two years. That time period includes the RFP, negotiating the contract, designing the facility, obtaining permits, and construction. The testimony indicated that in this region, the average starting salary of employees would be \$21,000 to \$22,000.

The committee also received testimony from a representative of CCA. According to the testimony, CCA houses more than 54,000 inmates in 61 facilities under contract for management in 23 states, the District of Columbia, and Puerto Rico and provides treatment, programs, and health care for its inmates. It was noted that 86 percent of CCA's facilities are accredited by the American Correctional Association. According to the testimony the respective states pay for what is needed and a state can contract for a set number of beds or a certain percentage of that amount. It was noted that CCA does not handpick inmates. According to the testimony, CCA's average starting salary is around \$21,000.

The committee also received testimony from the warden of Prairie Correctional Facility in Appleton, Minnesota. According to the testimony the facility houses 40 North Dakota inmates and has housed as many as 60 North Dakota inmates. The testimony indicated that the facility began as an economic development project in Appleton in an effort to create jobs and to develop a stable workforce in the area. In 1996 CCA purchased the facility. The facility has a maximum capacity of 1,365 inmates. The facility employs 400 persons and has an annual payroll of \$10.5 million. Annually, the facility pays approximately \$1 million in property taxes and \$730,000 in utilities. It was noted the facility has not had any successful escapes nor has it had any facility-wide incidents. The facility offers a variety of programming, including drug and alcohol treatment and aftercare. According to the testimony, employees are paid a competitive wage for the region, and the facility has a fairly stable workforce. The testimony indicated that employees are required to complete 200 hours of training before having contact with inmates. According to the testimony the facility offers certified vocational training programs in a number of areas, including facility maintenance, plumbing, carpentry, computers, and hydraulics. It was noted the state of North Dakota pays \$50 per day to house inmates at the Appleton facility.

Conclusion

Upon the receipt of the consultant's final report, the committee commended the Department of Corrections and Rehabilitation for its cooperation with the consultant

and the efforts made by the department to respond to the recommendations of the final report. The committee concluded that the state's corrections budget has reached the saturation point, and the state needs to be more creative and inventive in the area of corrections. The committee also commended the efforts of the department and the State Hospital for working together to provide more cost-effective and efficient services.

SUBSTANCE ABUSE AND DRUG SENTENCING STUDY

Background

Senate Concurrent Resolution No. 4018 directed a study of the commitment procedures and treatment needs of substance abusers and mandatory sentencing requirements. Because some of the issues to be addressed in this study were the same or similar to the issues studied by the consultant hired by the committee to study the operations and facilities of the Department of Corrections and Rehabilitation, the information and testimony received by the committee which is applicable to both studies is discussed in the first portion of this report.

Mental Illness and Chemical Dependency

The majority of North Dakota's initial laws concerning the voluntary, involuntary, and emergency commitment of individuals with mental illness and chemical dependency were enacted in 1957 and were not substantially changed until 1977. In 1977 the Legislative Assembly enacted Senate Bill No. 2164, which is codified as NDCC Chapter 25-03.1. The bill established many of the commitment procedures for individuals with mental illness and chemical dependency. The bill was precipitated by a number of state and federal court decisions that had invalidated state commitment laws similar to North Dakota's.

A number of the commitment procedures contained in NDCC Chapter 25-03.1 have been amended since 1977. For example, in 1989, Senate Bill No. 2389 replaced the terms "alcoholic individual" and "drug addict" with "chemically dependent person"; the bill set forth more specific procedures for the application for involuntary treatment; and the bill permitted the parties to waive the preliminary hearing. In 1993 Senate Bill No. 2370 authorized a state's attorney to seek reimbursement of funds expended by a county for a respondent who was determined to be indigent but is later found to have funds or property; clarified that a respondent has a right to a preliminary hearing; and set forth a procedure for a respondent to seek the discharge of a petition.

North Dakota Drug Laws

The Uniform Controlled Substances Act, codified as NDCC Chapter 19-03.1, is the primary law regulating controlled substances in North Dakota. The Act has been adopted in 48 states, the District of Columbia, Puerto Rico, and the United States Virgin Islands.

Chapter 19-03.1 was initially passed in 1971 and is administered by the State Board of Pharmacy. Controlled substances or drugs are divided into five schedule classifications ranging from Schedule I, which lists drugs having a high potential for abuse and no accepted medical use, to Schedule V, which lists drugs having a low potential for abuse and currently accepted medical use.

Mandatory Sentences for Drug Offenses

Mandatory sentencing laws have been among the more popular crime-fighting measures of recent years. Mandatory sentencing laws require that a judge impose a sentence of at least a specified length if certain criteria are met.

For proponents of mandatory sentences, their certainty and severity help ensure that incarceration goals will be achieved. Those goals include punishing the convicted and keeping them from committing more crimes for a period of time as well as deterring others not in prison from committing similar crimes. Critics of the laws, however, point out that mandatory minimums foreclose discretionary judgment when it may most be needed and that these laws result in instances of unjust punishment.

North Dakota Century Code Section 19-03.1-23 provides for mandatory terms of imprisonment for the manufacture, delivery, or the possession with intent to manufacture or deliver certain controlled substances. The crime with which an offender may be charged and the length of mandatory imprisonment under this section is dependent upon the classification of the controlled substance and whether the offender has previous convictions for that offense. Section 19-03.1-23.1 provides for increased penalties for aggravating factors in drug offenses, including the manufacture or distribution of a controlled substance in or on or within 1,000 feet of a school or the delivery of a controlled substance to a minor.

Testimony and Committee Considerations

The committee received testimony and reviewed information submitted by the Department of Corrections and Rehabilitation, the Attorney General, the Department of Human Services, the Governor, and representatives of the North Dakota Commission on Drug and Alcohol Abuse regarding chemical dependency commitment and treatment and regarding drug offense sentencing requirements. The committee's considerations centered on four issues--mandatory drug sentences, substance abuse offenses and treatment, methamphetamine concerns, and a report from the Attorney General on the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in this state.

Mandatory Drug Sentences

The committee received testimony regarding the state's mandatory drug offense sentences. According to the testimony, among all admissions, 103 people, or

13.7 percent, were sentenced under mandatory laws for violent, sex, drug, or driving under the influence (DUI) offenses. Of those 103, 81 percent were male. In 2001, 70.9 percent of mandatory admissions were for drug offenses. The average sentence was 27.5 months with a mandatory period to serve of 20.2 months. Of the total incarcerated population of 1,140 on February 1, 2002, 162 inmates, or 14.2 percent, were incarcerated under mandatory sentence laws.

In 2001 the Legislative Assembly enacted House Bill No. 1364, which repealed the one-year and one-day mandatory time for first-time drug possession offenders. The bill became effective on August 1, 2001. According to the testimony the Department of Corrections and Rehabilitation completed an impact assessment of the bill shortly after the effective date of the bill and determined the bill to have no measurable impact on the number of offenders housed in secure confinement. To confirm these results, the consultant hired to study the department conducted a hand review of the sentencing survey reports on the 73 offenders admitted for either drug sale or possession or both to determine the applicability of the bill to offender. The hand review revealed that 5 of the 73 offenders appeared to be first-time offenders. According to the testimony this small number of offenders would have very little impact on the prison population.

The committee also received testimony that alternatives to the state's mandatory sentencing laws should be considered. According to the testimony there is a need for more education and treatment programs for the state's youth.

Following is a chart that indicates the sentences by offense type for inmates with mandatory sentences who were in the custody of the Department of Corrections and Rehabilitation in 2001:

Gender and Offense Type	Number of Admits (2001)	Average Sentence (Months)	Mandatory Time (Months)	Number of Persons Incarcerated (February 1, 2002)
Males	83	32.8	21.8	135
Violent	11	32.7	30	36
Sex offense	8	134.3	52	4
Drug sale/possession	54	34.1	21.3	83
Driving under the influence	15	17.9	10.6	12
Females	20	23.7	11.2	27
Violent	0			2
Drug sale/possession	19	25	12	24
Driving under the influence	1	12	6	1
Total	103	27.5	20.2	162

The committee makes no recommendation regarding the state's mandatory drug offense sentences.

Substance Abuse Offenses and Treatment

The committee received extensive testimony from the Department of Corrections and Rehabilitation and the Attorney General regarding substance abuse problems and substance abuse offenses being committed in the state. According to the testimony the majority of offenders sentenced to the Department of Corrections and Rehabilitation have serious chemical dependency issues. According to department records, in the past two years, 66 percent of offenders sentenced to prison have an alcohol or drug addiction. In addition, it was noted that if other addictions, such as gambling, are included in the calculations, 80 to 85 percent of inmates have some type of addiction. According to the testimony the primary treatment options in the prison include intensive outpatient treatment (4 weeks/30-36 hours); day treatment (5 weeks/120 hours); long-term residential treatment (six months to one year in the therapeutic community); the TRCU program (average 100 days early in sentence); and the DUI program (during last 90 days of sentence). The testimony indicated that of those offenders on parole or probation in the community, 64 percent have been referred to treatment to address substance abuse or other treatment issues. According to the testimony the majority of offenders are able to remain crime-free upon release if they do not resume substance abuse.

The testimony indicated there are consequences for an inmate who refuses treatment. It was noted that the accumulation of "good time" requires the participation in treatment. According to the testimony the Parole Board considers an inmate's participation in treatment when reviewing an inmate's request for parole. The department also testified that most of the inmates sentenced for DUI violations have been charged with four or more DUIs. According to the testimony most of those inmates have gone through a treatment program at some point before being incarcerated, and a majority of those offenders participate in a treatment program while incarcerated. According to the testimony the recidivism rate of inmates who successfully complete treatment is about one-half of the general prison population.

The committee also received testimony that services for mental illness and substance abuse have moved from an institutional to community-based service model over the past several years. According to the testimony recent research indicates that chemical dependency alters the brain biology and that the brain alteration for a person using methamphetamines is very rapid and intense, more so than with other drugs. Because of this change, the person's response to methamphetamine addiction treatment may take longer than some other chemical addictions. According to the testimony there are no guarantees with treatment. It was noted that only about 10 percent of people trying to remain drug-free or alcohol-free are able to do so after their first treatment. According to the testimony a goal of treatment is not only a continuance of sobriety but also an increase in the person's ability to function in society. According to the testimony the Department of Human Services works closely with the Department of Corrections and

Rehabilitation treatment programs. According to the testimony, treatment works best when it is combined with a cognitive approach

The committee also received testimony that various medications exist which are used for detoxification. The approval of more medications for the treatment of addiction is anticipated. According to the testimony there is a need for adequate funding to provide those medications. The testimony indicated in some cases, persons requiring treatment may need to continue to take a low dose of antidepressants for the remainder of their lives. According to the testimony the needed medications are provided to an inmate while the inmate is incarcerated, but often following an inmate's release, that person is often unable to afford to continue with the medication and relapses occur. The testimony indicated the regional human service centers provide samples and have indigent drug programs for those who cannot afford to purchase the medications. However, funding for those programs is diminishing.

Methamphetamine Concerns

The committee received extensive testimony regarding the changes in substance abuse patterns in the state, especially the use and manufacture of methamphetamines. According to the testimony the state has seen an explosion of methamphetamine use and methamphetamine-related crimes since the mid-1990s. According to the Attorney General, as of September 2002, the number of methamphetamine lab busts had reached 178, twice the number of busts for 2001. According to the testimony Williams County headed the list with 36 methamphetamine lab busts, followed by Ward County (23), Burleigh County (17), and Grand Forks County (14). The testimony indicated although methamphetamine use is becoming more prevalent in the state, increased public awareness of the indicators of methamphetamine labs, together with the efforts of drug task force agents and local law enforcement agencies, have led to an increasing success rate in detecting and eliminating the labs. The testimony indicated that to combat the methamphetamine problem, a broad and full public awareness of the problem is needed. The committee received testimony that a large amount of the ephedrine used to make methamphetamines comes from Canada. It was noted that other states, especially those in the midwest, are experiencing the same problems with methamphetamine manufacture and use. The typical methamphetamine lab in North Dakota is small, and the persons operating the labs include educated and uneducated, young and old. According to the testimony some of the trigger signs of a possible methamphetamine lab include an unusual smell, persons coming and going at odd hours, and people using a building believed to be unoccupied. The Bureau of Criminal Investigation only has 30 agents statewide so it must rely on the public for tips. According to the testimony many busts are made as the result of traffic stops. It was reported that in spite of the increases in the number of methamphetamine labs in the state, most of the methamphetamines used in the state are manufactured out of state.

The Attorney General's office has developed a program known as the North Dakota Retailers Meth Watch Program. The program is a partnership between the Attorney General's Bureau of Criminal Investigation and the state's retailers. The program's goals are to raise the level of awareness across the state of the methamphetamine lab problem, educate and train retail employees to recognize the telltale signs of individuals who are obtaining the necessary precursors of the illegal production of methamphetamine, and to eliminate the precursors. It was also noted it is important that the education process be extended into the school systems. However, the programs must be workable, and the programs must be introduced at an early level. According to the testimony the programs must also educate parents. The testimony stressed the need for the involvement of parents, schools, churches, law enforcement, and the community.

The Governor and the Attorney General have formed the North Dakota Commission on Drugs and Alcohol to evaluate existing programs in the areas of enforcement, prevention, and treatment. The commission includes several legislators as well as other persons who work in the areas of treatment, prevention, education, and law enforcement. The commission is studying which programs work and which do not work. The commission has received information from other states, including Kansas and Wyoming, regarding those states' problems, programs, and success stories. The commission has conducted eight public forums throughout the state in an effort to update the North Dakota comprehensive substance abuse prevention five-year plan. The Attorney General testified that the commission has also reviewed the state's mental illness commitment statutes regarding substance abuse and has concluded that the statutes do not need major change, but rather more education is needed in implementing the statutes that are in place. According to the testimony, education is the key and an overhaul of the commitment statutes is not needed.

Unlawful Drug Use and Abuse Report

The committee received a report from the Attorney General, pursuant to NDCC Section 19-03.1-44, on the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in this state. This initial report is intended to provide a

statistical baseline from which future successes or failures can be compared. The report contained information compiled by the State Department of Health, the state crime laboratory, the Department of Human Services, the Department of Corrections and Rehabilitation, and the Attorney General. The testimony indicated that in the future, the Attorney General hopes to be able to correlate changes in statistics directly to the outcomes produced by the North Dakota Commission on Drugs and Alcohol.

The report included a summary from the *2001 State-wide Youth Risk Behavior Survey*. The report provided information on the types of controlled substances tested at the state crime laboratory and the number of times tests were run for each controlled substance. According to the report, marijuana led the way during 2001 with 3,442 samples analyzed. The report also provided numbers from the Department of Human Services regarding treatment. The numbers reflected treatment statistics from the nine public providers across the state. The report also included information on the prison and probation component of the study. The analysis considered the number of admissions for drug offenses for the year, excluding parole violators. The report included an overview of current enforcement efforts to combat unlawful drug trafficking and usage and statistics on arrests. The report indicated that drug arrests in 2001 increased by 20.7 percent over 2000. According to the report, the number of methamphetamine lab busts is almost equally split between urban and rural locations.

Conclusion

It was the consensus of the committee that the laws and procedures in place regarding commitment for substance abuse and mental illness commitment are generally working well and do not need major change, but more education is needed in implementing the statutes that are in place.

The committee received updates on the progress of the efforts of the North Dakota Commission on Drugs and Alcohol. However, the committee finished its work before the commission's legislative recommendations were available for the committee's consideration. The committee was informed that any legislation developed by the commission would be introduced by the Attorney General.

EDUCATION COMMITTEE

The Education Committee was assigned four studies. House Concurrent Resolution No. 3061 directed a study of elementary and secondary education during the ensuing 5, 10, and 20 years, with emphasis on a review of the current school district structure, reorganization options, the potential for creating alternate administrative units, and the equitable distribution of state aid to school districts. Section 17 of House Bill No. 1344 directed a study of the feasibility and desirability of implementing a teacher compensation package that recognizes four levels of teachers from beginning to advanced and which bases the compensation level for each category on the individual teacher's ability to meet or exceed district standards for content knowledge, planning and preparation for instruction, instructional delivery, student assessment, classroom management, and professional responsibility. Section 1 of Senate Bill No. 2428 directed a study of the state and local tax structure for funding elementary and secondary education to determine the feasibility and desirability of enhanced state funding to school districts for delivery of core curriculum instruction, the equity of the existing degree of reliance on property tax revenues for elementary and secondary education funding and whether improved efficiency is attainable in delivery of elementary and secondary education services. House Concurrent Resolution No. 3052 directed a study of safety, efficiency, and cost-effectiveness with respect to school district transportation.

The Education Committee was also directed to receive reports regarding annual school district employee compensation, requests for and waivers of accreditation rules, requests for and waivers of North Dakota Century Code Section 15.1-21-03, which relates to instructional time for high school courses, and student scores on recent statewide tests of reading and mathematics.

Committee members were Senators Dwight Cook (Chairman), Tim Flakoll, Layton Freborg, Jerome Kelsh, David O'Connell, and Terry M. Wanzek and Representatives Larry Bellew, James Boehm, Thomas T. Brusegaard, Lois Delmore, Howard Grumbo, C.B. Haas, Lyle Hanson, Kathy Hawken, Bob Hunskor, Dennis E. Johnson, RaeAnn G. Kelsch, Lisa Meier, David Monson, Phillip Mueller, Darrel 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 2002. The Council accepted the report for submission to the 58th Legislative Assembly.

PROVISION OF EDUCATION STUDY

Background

Article VIII, Section 1, 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.

Section 1 has not been changed since its enactment in 1889. Article VIII, Section 2, 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.

Article VIII, Section 3, 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, Article VIII, Section 4, 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 at least the 1930s, the state has attempted to meet its constitutional directives by providing some level of financial assistance to local school districts. By the late 1950s, state support for education had evolved into the foundation aid program. During its nearly 50-year history, the program has grown to the point of providing during the 2001-03 biennium \$49.8 million for special education, \$67.2 million for tuition apportionment, \$2.2 million for revenue supplement payments, \$35 million for teacher compensation payments, and \$473.9 million for student payments and transportation.

During that same time period, the foundation aid program was the subject of numerous amendments, generally directed toward attaining the goal of an equitable method by which state aid would be distributed. While the committee recognized that an equitable distribution of state aid is the ultimate goal, the committee focused its efforts on the premise that a discussion of equity must include an examination of the entities receiving the funds. The committee determined that consideration should be given to the manner in which school districts are organized and administered in order to determine whether under the current structure equity is even attainable.

School District Demographics

In 1990 there were almost 117,000 students enrolled in kindergarten through grade 12 in this state. In 2002 that number had fallen to 105,214. By 2008 that enrollment is projected to be 87,912, and by 2012 the enrollment is projected to be 77,329. Declining student numbers are being felt throughout the state. Populations continue to shift from rural to urban areas and from west to east. As of the 2000 federal decennial census 36.9 percent of the state's people now reside in the eastern most counties--those bordering the Red River. In fact nearly one of every five North Dakotans now resides in Cass County. Seventy-four percent of the state's population resides in 13 counties. Only six of the state's 53 counties showed any growth during the decade of the 1990s, and only Cass, Burleigh, Rolette, Sioux, and Benson Counties showed any increases in children under age 18.

The 2000 census also showed that North Dakota has 160,849 children under age 18. Those children constitute 25 percent of the state's population. In 1960 children under age 18 constituted nearly 40 percent of the state's population. In 1984 the state had 11,833 births. In 2000 that number was 7,676. While only five counties were able to show increases in the number of residents under age 18 during the 1990s, five counties lost more than 30 percent of their under age 18 population during that same period.

This decline in student numbers has affected the number of school districts. In 1918 North Dakota had 4,700 one-room schools. By the late 1940s North Dakota had 2,200 school districts. In 2001 only 222 school districts remained. Of those 222 school districts, 105 had fewer than 100 students in high school and 138 had fewer than 150 students in high school.

High schools having more than 550 students in 2001 were able to offer their students an average of 108 different courses. That number fell to 55 for schools in the 150 to 549 range. Schools having between 75 and 149 students were able to offer an average of 45 courses, and schools having fewer than 75 high school students were able to offer an average of 32 courses. Only 18 high schools offer advanced placement courses. Among the 105 high schools that enroll fewer than 100 students, only one school offers advanced placement courses.

Regional Service Units

Regional service units have been discussed as alternatives to school district reorganization on a number of occasions during the past 40 years. Under the regional service unit concept, school districts would maintain their own autonomy, their own boards, and their own taxing structures but would enter a contractual arrangement for a variety of shared services. These could include the provision of special education services, vocational education services, technical assistance for school improvement, administrative functions such as those performed by a superintendent or a business manager, curriculum development services, distance-learning

services, federal title program management services, staff development services, technology support services, and any other services approved by the regional service unit's board of directors.

62-District Proposal

An alternative to the regional service unit considered by the committee involved a mandated reconfiguration of school districts. Under a committee directive that called for between 50 and 75 school districts, the Superintendent of Public Instruction proposed the creation of 62 school districts each approximately equal in size. Under the proposal each district would have had at least one high school within its boundary and would have sufficient taxable valuation to ensure its long-term viability.

The proposal would have allowed each of the 62 school boards to operate as many facilities as the school boards determined were needed in their respective districts. The proposal would also have decreased the disparity in mill levies which currently exists. Under current school district structure, the difference between the highest and the lowest levying district is 162.8 mills. Under the 62-district proposal, the range would have been narrowed to 149.3 mills.

The proposal was built on the concept that the largest district in each area would serve as an anchor to which the smaller districts would become attached. The intent was to use the fiscal strength of the largest district and enhance it with the resources of the smaller districts for the benefit of all. If only small districts come together, the ability to achieve fiscal equity and educational equity is more elusive. Significant staff reductions were not anticipated because the opportunities to reduce staff under a 62-district proposal were paralleled by the high rate of teacher retirements anticipated in the upcoming five years. Staff salary increases were deemed to be very likely because, in bringing together several districts, it was anticipated that the salary scale would rise to at least the level of the highest-paying district.

The Superintendent of Public Instruction determined that the reduction in duplication coupled with the other efficiencies that are reasonably anticipated with a consolidation of efforts would reduce the cost of education per student and result in a cost-savings of approximately \$21.9 million per school year.

76-District Proposal

While the 62-district proposal was based upon a specific configuration of districts, subject to amendment by the 58th Legislative Assembly, and thereafter, subject to change through the normal boundary restructuring processes of annexation, reorganization, and dissolution, a 76-district proposal considered by the committee would have provided a greater degree of local self-determination. It began with the concept of anchor districts, i.e., those districts having their administrative headquarters in cities having a population of 700 or more, as reflected in the 2000 census. All land not in the designated anchor districts would have had to become attached to one or more of the designated districts by

July 1, 2006. Any land not attached by that date would be placed in a district by an executive order of the Governor. Again, by creating a greater degree of consistency in the size and wealth of the ultimate districts, a greater degree of educational and fiscal equity was presumed to be achievable.

Minimum Enrollment and Educational Services

At the present time 92 school districts have at least 225 students enrolled in kindergarten through grade 12. These 92 districts educate 88 percent of the students and represent 79 percent of the taxable valuation in the state. At 225 students a school district averages approximately 17 students per grade level. However, as the student numbers continue to decline, that average will continue to be reduced, and the cost of education per student will increase dramatically. Another alternative addressing this situation involves concepts of minimum enrollment and minimum educational services.

One such proposal considered by the committee would have required that each school district in the state offer educational services to students from kindergarten through grade 12 and that it maintain a minimum enrollment of 225 students. If a school district were unable to meet both requirements, the district would be given three years within which to effect a reorganization. Failure to do so would result in a declaration by the Superintendent of Public Instruction, thereby initiating dissolution proceedings. Another alternative would be to require merely that each district offer educational services to students from kindergarten through grade 12, without imposition of a minimum enrollment requirement.

Raising the Bar

As an alternative to mandating consolidation the committee considered options for ensuring that school districts, if they continue to exist, provide a minimum number of educational offerings, require a minimum number of credits for graduation, allow for minimum increases in the school district equalization factor, and prepare to respond to school district and regional demographics by developing 5-, 10-, and 20-year plans. The plans would be required to address potential changes in academic, athletic, and extracurricular programs; potential staff changes; potential building changes, including repairs, remodeling, new construction, and closure; and potential taxation changes.

Committee Considerations and Recommendations

The committee considered a bill draft that would have directed the Superintendent of Public Instruction to establish no fewer than 6 nor more than 10 regional service units. Each unit would have had to include a school district having more than 2,500 students. Each school district in the state would be placed in a unit and would have to obtain through the unit all special education services and technical assistance for school improvement. School districts other than high school districts would have to obtain the services of a

superintendent and a business manager through the unit. The provision of other services and their related charges would be determined by the board of the unit.

Proponents suggested that school district cooperation, particularly through contractual means, could address many of the concerns that prompt discussion regarding the need to reorganize districts. While opponents agreed the regional service unit concept could be applied to provide additional services to the districts, they articulated the concern that the concept appeared to be adding another layer of bureaucracy with no guarantee that there would be any cost-savings. In fact there was a significant likelihood that there would be additional costs. The committee makes no recommendation regarding the bill draft.

The committee considered four bill drafts that would have reconfigured the existing 222 school districts. The first would have resulted in 62 school districts with the lines drawn in statute and subject to future annexations, reorganizations, and dissolutions. The second bill draft would have resulted in 75 school districts, created around anchor districts. The third bill draft would have required that school districts maintain a minimum enrollment of 225 students and offer all grade levels from kindergarten through grade 12. The fourth bill draft would have removed the minimum student requirement and simply provided that all school districts must offer all grade levels from kindergarten through grade 12. The arguments raised for and against all four bill drafts were similar in nature. Proponents indicated that any of these methods of reorganization would bring commonality to the districts and therefore greater fiscal and educational equity. The disparity in mill levy rates would be reduced, students would have greater access to courses and services, and the cost of education per student would be reduced. Proponents also pointed out that equity concerns have been discussed for a long time and that the incentives offered to school districts for voluntary reorganization during the last 20 years have resulted in nothing that begins to approximate the outcome of these bill drafts.

Opponents argued that their schools are efficient and are providing a good education to their children. They claimed their children have opportunities to play on athletic teams and suggested that those opportunities might not be available in larger school districts. They suggested that any form of reorganization would result in a closing of their schools and consequently, the demise of their communities. Opponents also stressed that through technology each of the school sites could offer a broader array of courses to students than are now offered. They indicated that they are in the best position to determine when a school is no longer fulfilling its obligation to their children, and upon making that determination, they could be counted on to make appropriate decisions regarding the future of the school and the education of their children.

The committee considered a bill draft that would have raised the current equalization factor of 32 mills by 2 mills each year. Proponents argued that as long as

property value is considered to be a reflection of wealth, the equalization factor system is the best form of equalization available. One group of opponents suggested that increasing the equalization factor by only two mills a year is such a small incremental move that achieving any kind of equalization will take far too long. Another group of opponents suggested districts are not "land rich," they are "student poor," and as a consequence, equalization cannot take place until all districts are given greater resources. The committee makes no recommendation regarding the bill draft.

The committee determined credence should be given to the desire for local control of education. However, the committee also determined that given the constitutional mandate requiring the Legislative Assembly to provide for a uniform system of free public schools, it would be appropriate to impose on the school districts certain minimum requirements regarding their educational offerings.

The committee recommends House Bill No. 1033 to place in statute the requirement that a student successfully complete at least 21 high school credits before being eligible to receive a high school diploma. Proponents pointed out that it is a longstanding but incorrect assumption that the state has in statute a requirement regarding the minimum number of credits needed for high school graduation. Most school districts already require at least 21 units for high school graduation and nothing in the bill would preclude a school district from requiring any number greater than 21.

The committee recommends Senate Bill No. 2031 to broaden the number of courses that a high school must make available to its students. The bill would require there be made available each year one unit of English, which meets or exceeds the state content standards, at each grade level from 9 through 12; one unit of mathematics, which meets or exceeds the state content standards, at each grade level from 9 through 12; one unit of science, which meets or exceeds the state content standards, at each grade level from 9 through 12; one unit of social studies, which meets or exceeds the state content standards, at each grade level from 9 through 12; one-half unit of health, which meets or exceeds the state content standards, at each grade level from 9 through 12; one-half unit of physical education, which meets or exceeds the state content standards, at each grade level from 9 through 12; two units of music, which meet or exceed the state content standards; three units of the same foreign language, which meet or exceed the state content standards; and 24 units of elective courses.

The bill provides that required course offerings must be presented to students and, if any student wishes to take a listed course, the school must provide it. The course may be provided through any delivery method not contrary to state law and may include classroom or individual instruction and distance-learning options, including interactive video, computer instruction, correspondence courses, and postsecondary enrollment options.

Proponents indicated that current law requires each public and nonpublic high school to make available to each student four units of English, three units of

mathematics, four units of science, three units of social studies, one unit of health and physical education, one unit of music, and six elective units from a prescribed list. The difficulty with the current language is that it appears to allow a school to offer four years of English during one school year and then no English classes for the next three years. It is not clear whether a school must offer one unit of health and one unit of physical education or one unit that combines the two. There is no requirement governing the course content, the list of elective courses is extremely limited, and as a whole the required offerings do not meet the minimum high school course requirements established by certain universities or the recommended high school course requirements established by others.

Proponents also indicated the bill is a first step toward providing students in this state with equitable educational opportunities.

The committee recommends House Bill No. 1034 to require school boards to develop long-term plans. The bill would require that during the first six months of each even-numbered year the board of each school district hold a public hearing to consider the effects of demographics on the district and to consider appropriate responses to such changes. The board would then be required to prepare a report that sets forth the district's 5-, 10-, and 20-year plan. A school district's plan must include potential changes in academic, athletic, and extracurricular programs; potential staff changes; potential building changes, including repairs, remodeling, new construction, and closure; and potential taxation changes. When a school district's report is ready the school district must publish notice of that fact in the newspaper, and it must make the report available upon request.

While opponents argued that 20 years is a long time in terms of doing any practical planning, proponents suggested that the bill will force school boards and school district patrons to have public conversations about factors that will seriously impact their ability to deliver education to their students during the next 5, 10, and 20 years.

TEACHER COMPENSATION STUDY

Background

History of Teacher Compensation

In the 1800s local communities designed schools to provide basic academic skills and moral education for their children. Teacher compensation was rarely more than the provision of room and board by the community. This manner of compensation provided a strong incentive for a teacher to maintain positive relations with community members and to maintain the expected high degree of moral character. The provision of room and board in exchange for teaching services also reflected the barter economy of the time.

During the 1900s, the preparation of teachers became more uniform. Requirements for higher levels of education became more common. Just as society had progressed from a barter economy into one that was

industrially focused and cash-based, so too did the compensation of teachers move from the provision of room and board to a position-based salary system. Initially, this system paid elementary teachers less than secondary teachers, arguably because different levels of preparation were required for these positions. It also paid women and minority teachers less than nonminority male teachers.

As the century progressed, so too did opposition to salary discrimination. Greater skills were required for the job of teaching, regardless of the grade level taught or the gender or race of the teacher. Out of this recognition emerged the single salary schedule. Contrary to its name, the single salary schedule did not compensate every teacher in a like fashion or amount. Those with greater years of experience, educational units, and educational degrees received higher compensation than those with fewer. Likewise, those who coached sports, advised clubs, and coordinated various activities received higher compensation than those who did not. The rationale for the salary amounts was objective, measurable, and appropriate given the nature of the school systems at the time.

During the last 10 years changes in education have led to increased skill requirements for teachers. Demands for high standards and accountability coupled with an increasingly diverse student population require teachers to develop and maintain high levels of instructional skills, management skills, and leadership skills. Within this environment there appears to be an emerging consensus that while the traditional single salary schedule may feature fairness, equity, and ease of administration, it does not focus on results, nor does it provide incentives for any long-term career development that is linked to the knowledge and skills needed to teach today's students.

Merit Pay

The committee was told that an alternative to the single salary compensation system is that of merit pay. Under this concept teachers who do a better job receive a higher level of pay. Initially it was thought that a merit pay system would hold schools accountable and would hold teachers accountable. Early efforts at implementing merit pay systems tended to be based on either subjective or very narrow criteria such as students' test scores or administrative evaluations. For the most part the amount of money that was set aside for merit pay was insignificant. In addition the money was generally placed in one pot and a competitive format was established for all eligible teachers.

By the 1980s merit pay had evolved into a system that increased the number of pay categories in the salary system in order to reward teachers for acquiring additional skills. In 1986, 29 states were involved in the development of "career ladders" or similar teacher incentive programs. By 1994, however, only Arizona, Missouri, Tennessee, and Utah still funded such programs.

Merit pay plans, and variations of merit pay plans tended to become caught in a morass that led to their demise. How does one determine who is a good teacher? How does one demonstrate competence in teaching? What precisely is meant by accountability? To whom must a teacher be accountable? For what? What is the applicable criteria?

Performance-Based Pay

In the private sector compensation is frequently used as a management tool to achieve organizational goals. Payment for a specified performance level is a reward that may be given to individuals, to groups, or to entire organizations. When applied to an educational setting, performance-based pay generally refers to a salary structure that ties financial rewards to student achievement. Some performance-based pay models tie the financial rewards to an increase in an individual teacher's skills and abilities, on the assumption that such assets have a direct correlation to students' learning and achievement. Other models combine both skill and performance-based incentives for teachers or for schools.

During the 2001 legislative cycle four states actively pursued performance-based pay plans for teachers. The Nebraska Unicameral failed to pass its plan; the New Mexico Legislature passed a bill that was subsequently vetoed by the Governor; and the Ohio General Assembly considered a pilot project but failed to enact it. Only the Iowa General Assembly successfully passed and funded its performance-based pay plan for teachers.

Iowa's Performance-Based Pay Plan for Teachers

The committee reviewed Iowa's performance-based pay plan for teachers.

Declaring that it wished to create a student achievement and teacher quality program that acknowledges that outstanding teachers are a key component in student success, the Iowa General Assembly enacted a program designed to enhance student achievement and redesign compensation strategies and teachers' professional development so that the state could attract and retain high-performing teachers, reward teachers for improving their skills and knowledge in a manner that translates into better student learning, and reward teachers for improvement in student achievement.

The Iowa program consists of four major elements:

1. Mentoring and induction programs that provide support for beginning teachers;
2. Career paths with compensation levels designed to strengthen the state's ability to recruit and retain teachers;
3. Professional development designed to directly support best teaching practices; and
4. Team-based variable pay that provides additional compensation when student performance improves.

The specific criteria upon which Iowa teachers are to be evaluated include:

1. The teacher's ability to enhance academic performance and support for and implementation of the school district's student achievement goals;
2. The teacher's competence in content knowledge appropriate to the teaching position;
3. The teacher's competence in planning and preparing for instruction;
4. The teacher's strategies for delivering instruction that meets the multiple learning needs of students;
5. The teacher's methods for monitoring student learning;
6. The teacher's competence in classroom management;
7. The teacher's demonstration of professional growth;
8. The teacher's fulfillment of professional responsibilities established by the school district; and
9. Any other criteria established jointly by the school board and representatives elected by the teachers.

An Iowa school district is eligible to receive additional funds if the board of the school district submits to the state Department of Education a written statement declaring the district's willingness to:

1. Commit and expend local funds to improve student achievement and teacher quality;
2. Implement a beginning teacher mentoring and induction program;
3. Provide the equivalent of two or more additional contract days for teacher career development that aligns with student learning and teacher development needs, including the integration of technology into curriculum development;
4. Adopt a teacher career development program;
5. Adopt a teacher evaluation plan that requires, in addition to annual evaluations, a comprehensive evaluation of all teachers in the district at least every five years and which requires administrators to complete evaluator training;
6. Adopt teacher career paths based upon demonstrated knowledge and skills; and
7. Adopt a team-based variable pay plan that rewards individual school success.

With respect to the beginning teacher mentoring and induction program each participating school district in Iowa must provide for:

1. A two-year sequence of induction program content and activities that support the state's teaching standards and beginning teachers' professional and personal needs
2. Mentor training that includes skills of classroom demonstration and coaching and district expectations for beginning teacher competence;
3. The placement of mentors and beginning teachers;
4. A process for dissolving mentor and beginning teacher partnerships;
5. District organizational support so that mentors and beginning teachers can receive release

time for planning, providing demonstration of classroom practices, observing teaching, and providing feedback;

6. A structure for mentor selection and assignment;
7. A district facilitator; and
8. Program evaluation.

Upon completion of the program, a beginning teacher must be comprehensively evaluated to determine if the individual meets expectations and is ready to move to the career level. If the individual is not deemed ready to move to the career level, the school district may offer the individual a third year of participation in the program at the end of which the individual is again comprehensively evaluated.

Each participating district in Iowa is also expected to offer teacher career development. A district's program must:

1. Provide for support that meets the career development needs of individual teachers and that is aligned with the Iowa teaching standards;
2. Provide for research-based instructional strategies that are aligned with the school district's student achievement needs and the long-range improvement goals;
3. Include instructional improvement components such as student achievement data, analysis, theory, classroom demonstration and practice, technology integration, observation, reflection, and peer coaching; and
4. Include an evaluation component that documents the improvement in instructional practice and the effect on student learning.

With respect to teacher compensation, a district in Iowa must pay a beginning teacher participating in the mentoring program at least \$1,500 more than the district paid for a comparable position during the previous year, unless the minimum salary for a first-year beginning teacher exceeds \$28,000. There must be at least a \$2,000 difference between the minimum salary paid to a career I teacher and the average beginning teacher salary unless the school district has a minimum career I teacher salary that exceeds \$30,000. A career I teacher is defined as someone who has successfully completed the beginning teacher mentoring program, who participates in the career development program, and who shows continuous improvement in teaching.

There must be at least a \$5,000 difference between the salary paid to a career II teacher and the salary paid to a career I teacher. A career II teacher is defined as someone who meets the requirements of a career I teacher and who has been evaluated by the school district and deemed to have successfully demonstrated the competencies required by the school district in order to be a career II teacher.

There must be at least a \$13,500 difference between the salary paid to an advanced teacher and the salary paid to a career I teacher. An advanced teacher is defined as someone who has been evaluated by a review panel and deemed to have successfully demonstrated the competencies required in order to be an

advanced teacher. The individual must also possess the skills and qualifications necessary to assume leadership roles.

A teacher in Iowa may be promoted only one level at a time and must remain at that level for at least one year before requesting promotion to the next level. Reviews must take place annually and must be conducted by a certified evaluator. Whereas annual reviews include classroom observation of the teacher and supporting documentation from other supervisors, parents, and students, comprehensive evaluations require classroom observation of the teacher, a review of the teacher's progress, and implementation of the teacher's individual career development plan. An appeal process is included for any teacher who is denied advancement.

In order for a career II teacher to receive an advanced designation, the teacher must submit a portfolio of work aligned with the Iowa teaching standards to a review panel established by the Iowa Department of Education. Based on a review of the portfolio the panel must determine whether the teacher demonstrates superior teaching skills and must make a recommendation to the board of educational examiners regarding whether or not the teacher is to receive an advanced designation. Review panels are established by the Department of Education and include at least one nationally board-certified teacher and one school district administrator. The members serve a staggered three-year term and may be reappointed to a second term.

A career II teacher who does not receive a recommendation of advancement from a review panel may appeal that denial to an administrative law judge. Expenses associated with the appeal are borne by the teacher, and the state may not be held liable for a teacher's attorney fees, costs, or damages resulting from the appeal.

The Iowa Department of Education must establish an evaluator training program for the purpose of improving the skills of school district evaluators in making employment decisions, making recommendations for licensure, and moving teachers through a career path. Administrators who conduct evaluations of teachers are required to complete the training program. Upon completion of the program the administrator becomes "certified" to conduct evaluations.

Each participating school in Iowa is to administer valid and reliable standardized assessments at the beginning and end of a school year to demonstrate growth in student achievement. If a particular attendance site has demonstrated improvement in student achievement, all the teachers employed at the site share in a cash award. Each participating school district is to create its own design for a team-based pay plan. The plan must be linked to the district's comprehensive school improvement plan and must include student performance goals, student performance levels, multiple indicators to determine progress toward the goals, and a system for providing the financial rewards. The team-based pay plan must be approved by the board of the school district and the Department of Education.

Committee Consideration - Conclusion

The committee reviewed a bill draft that would have appropriated \$340,000 to the Superintendent of Public Instruction for the purpose of funding a pilot project to implement a knowledge-skills-based pay system similar to that in Iowa. Of that amount \$150,000 would have been available for two participating entities, each of which had to be a school district enrolling more than 2,500 students, or a consortia of school districts having a combined enrollment in excess of 2,500 students. The pilot project would also have provided each participant with an additional \$20,000 to cover the direct and indirect costs of participation.

Proponents of the concept suggested that new federal accountability standards set forth in the No Child Left Behind Act establish higher qualification levels for teachers and will consequently require alternative ways to enhance teacher compensation. They indicated a pilot project would allow at least two districts or consortia to address improved methods of teacher compensation in a proactive manner.

Opponents pointed out that it would not be a prudent recommendation to expend \$340,000 at a time when there is concern regarding the state's ability to maintain the commitment to teacher compensation made by the 2001 Legislative Assembly. Opponents also pointed out that nothing in the current law precludes a school district or a consortia of districts from implementing a knowledge-skills-based pay plan on their own.

The committee makes no recommendation concerning its teacher compensation study.

STATE AND LOCAL TAX STRUCTURE STUDY Background

During the 1999-2000 school year the state had 230 school districts, 8,623 full-time administrative and instructional personnel, 108,094 students and 113,540 in average daily membership, and an average cost per student of \$5,136. Local sources assumed 42.79 percent of the cost incurred in educating kindergarten through grade 12 students, the state assumed 43.46 percent, and other sources accounted for the remaining 13.75 percent. Ten years earlier, during the 1989-90 school year, the state had 276 districts, 8,723 full-time administrative and instructional personnel, 116,951 students and 118,086 in average daily membership, and an average cost per student of \$3,427.14. Local sources assumed 39.34 percent of the costs incurred in educating kindergarten through grade 12 students, the state assumed 47.33 percent, and other sources accounted for the remaining 13.33 percent. Like most other states, North Dakota finances its state and local government services primarily through sales taxes and income taxes levied at the state level and through property taxes and sales taxes levied at the local level. State government relies most heavily on the state sales taxes, which constitute approximately 44 percent of general fund revenue.

Sales Tax

The state's sales tax rate is 5 percent, which places North Dakota higher than 16 other states, lower than 17 other states, and at the same level as 12 other states. The collections per capita place North Dakota 12th highest among the states.

Individual and Corporate Income Taxes

Individual income taxes account for 25 percent of the state's revenue while corporate income taxes account for an additional 6 to 8 percent. During fiscal year 1999 the state's income tax rates generated \$287 per capita, thereby placing North Dakota 41st of the 43 states that have individual income taxes.

Other State Taxes

Coal severance and oil extraction taxes accounted for approximately 14 percent of the state's general fund revenue in 1987-89. During 1999-2001 they accounted for 5 percent of general fund revenue. Estate taxes, which are collected by the state but returned to the counties and cities in which the property is located, generate between \$3 million and \$7 million annually. Taxes on the gross proceeds from games of chance generate approximately 1 to 2 percent of the state's general fund revenues.

Local Government Tax Instruments

Thirty-eight percent of all local government revenues come from the state, 31 percent come from property taxes, 23 percent come from miscellaneous sources, 5 percent come from federal sources, and 3 percent come from local sales and use taxes. Of the \$537 million collected in property taxes during 1999, 55 percent went to school districts, 24 percent went to counties, 13 percent went to cities, 4 percent went to park districts, 2 percent went to townships, and the remaining 2 percent was distributed to other special districts.

During 1999, 85 North Dakota cities imposed and collected local sales and use taxes. The total amount generated was in excess of \$53 million. Local governments also collect a portion of their revenues through user fees such as those applied to building permits, public utilities, and facility fees.

Property Taxes as a Funding Source for Kindergarten Through Grade 12 Education

The committee received information on a recent study of the state's tax structure. During the 1999 legislative session, the Tax Commissioner was provided funding to support a citizen's study of the tax structure in North Dakota. The study group was charged with analyzing the state's tax structure, taking a critical look at how the tax structure serves the state, and making recommendations to promote a fair and simple tax system that is responsive to a 21st century economy. The study group found that overall the state and local tax system in North Dakota is rather easily understood and generates fairly stable revenues. The burden is spread

across a variety of traditional instruments with relatively high taxpayer compliance. With respect to property taxes specifically, the group concluded that the property tax burden to support kindergarten through grade 12 education is disproportionately borne by agriculture in rural counties. Statewide, agricultural property contributes 32 percent of the property taxes paid to school districts. By county the percentage of agriculture-related property taxes paid to school districts varies from 4.4 percent to 97.3 percent. Fifty-five percent of the property tax paid by a "typical" agricultural or commercial property taxpayer in a rural county goes to the local school district.

The group found that by reducing taxes on agricultural and commercial properties, through imposition of a local sales tax, or through imposition of increased state sales and income taxes, school districts would be less reliant on local real estate taxes and the total property tax burden could be reduced. The group also concluded that as the financial burden would shift from the local level to the state level, so too would the degree of decisionmaking otherwise exercised by local entities.

Committee Considerations - Conclusion

The committee reviewed demographic information pertaining to urban and rural areas of the state between 1900 and 2000. Testimony indicated that only 6 of the 53 counties showed an increase in population during the past 10 years. During that period 27 counties lost more than 40 percent of their 20- to 34-year-old population.

With respect to elementary and secondary education, the committee received information that indicated slightly more than 10 years, the state is expected to have only 91,000 students in public, private, and home-education situations. These figures assume there will be no outmigration between now and then and that the birthrates will remain at the current level of 7,635 per year. In addition to student numbers, declines can be measured in student-teacher ratios. Since 1997 the state has seen a decline in the student-teacher ratio from 13.11 to 11.54.

The committee recognized that both the decline in population and the geographic shift in population affect tax burdens. The committee determined that rather than directing its efforts toward restructuring the state's tax base, it should consider alternative ways of structuring the state's education delivery system so that funding available at both the state and the local level could be used in the most efficacious manner possible.

The committee makes no recommendation concerning its study of state and local tax structure for funding elementary and secondary education.

SCHOOL DISTRICT TRANSPORTATION STUDY Background

While the inception of public education in this country can be traced back to the mid-1600s, it was not until the 1800s that the transportation of public school students in special vehicles became a feature. First efforts at the organized transportation of students involved nothing more than horse-drawn wagons generally borrowed from

area farmers. The wagons were later replaced with gasoline-powered school trucks, and as the country's road system improved, the early trucks were in turn replaced in both the urban and rural areas by schoolbuses.

With the increase in schoolbus numbers came an increase in problems. Accidents involving schoolbuses caused school officials to think about developing safety guidelines and recommending safety standards. In 1939 representatives from 48 states gathered to develop standards and recommendations for the schoolbus industry. Since 1939 there have been 12 additional national conferences on school transportation. At each conference, representatives from the states gather to revise existing standards and to establish new safety standards for schoolbuses, as well as operating procedures for the safe transportation of students, including those with disabilities.

Today there are approximately three dozen Federal Motor Vehicle Safety Standards that apply to schoolbuses. These standards address a wide range of vehicle components and systems, including outside mirrors, warning lights, emergency exits, and fuel system integrity. Four of the standards are unique to schoolbuses. These standards govern the performance and use requirements for schoolbus pedestrian safety devices such as stop signal arms, the minimum structural strength of schoolbuses in order to maintain vehicular integrity in the case of a rollover, the minimum requirements for the strength of the joints between the panels of the schoolbus body, and requirements for the seating systems in all sizes of schoolbuses, including the securing of wheelchairs during transit and the restraint of wheelchair occupants.

For the 1999-2000 school year 46,114 students were transported 23,349,766 miles at a total cost of \$29,515,603 in North Dakota. The average cost of transportation per student transported was \$640.06, and the average cost per mile was \$1.26.

State Aid for School District Transportation

North Dakota Century Code Section 15.1-27-26 provides for the following transportation payments:

1. Twenty-five cents per mile for each schoolbus and school vehicle having a capacity of nine or fewer students and transporting students who reside outside the incorporated limits of the city in which their school is located;
2. Sixty-seven cents per mile for each schoolbus and school vehicle having a capacity of 10 or more students and transporting students who reside outside the incorporated limits of the city in which their school is located;
3. Twenty-five cents per mile for each schoolbus and school vehicle having a capacity of nine or fewer students and transporting students who reside within the incorporated limits of the city in which their school is located;
4. Thirty-five cents per mile for each schoolbus and school vehicle having a capacity of 10 or

more students and transporting students who reside within the incorporated limits of the city in which their school is located; and

5. Twenty-five cents for each one-way trip by a student who rides a schoolbus or a commercial bus to or from school and who resides within the incorporated limits of the city in which the student's school is located.

The school district transportation payment system is based on historical costs. School districts receive transportation formula dollars based upon the miles traveled by a particular sized schoolbus. Regardless of whether a large bus transports 2 students or 40 students, the rate of payment is the same. The method presently used by North Dakota to promote efficiency involves the capping of transportation payments at 90 percent of the actual cost incurred by the district.

Data Envelopment Analysis

The committee learned that an alternate method for measuring and encouraging efficiency, as well as providing a basis for funding, involves an analysis of comparable operating units. All school districts in the state would be divided into categories or peer groups. Once the categories or groups are established, the next step is to standardize the factors. In the case of school district transportation the factors might include costs for administrators, drivers, mechanics, repairs, fuel, etc. Through use of a mathematical formula, variables are analyzed to determine the relative efficiency of each district. Each district is compared to the other districts in its category or group. If funding is made a part of the formula, the funding is then based on the operational cost of the most efficient district in the category. This type of analysis is known as data envelopment analysis. In addition to providing a basis for funding, it is also able to assist school districts in reconfiguring their transportation routes so that the greatest possible degree of efficiency might be attained.

The data envelopment analysis project has been in a stage of partial completion for a number of years. An initial appropriation of \$50,000 was made for the project during the 1997 legislative session but not supplemented in 1999 nor 2001.

Committee Considerations - Recommendation

The committee recommends Senate Bill No. 2032 to appropriate \$50,000 to the Superintendent of Public Instruction for the completion of the data envelopment analysis project. The committee determined that the completion of the project was a necessary precursor to an examination of changes in the school district transportation funding formula. Under the present method of funding school district transportation, there exist tremendous payment differentials between districts having seemingly similar characteristics. By using a data envelopment analysis system, a new transportation payment system could be developed and implemented. This system would determine payments based on the most efficient school district in each peer group or category.

MISCELLANEOUS REPORTS

School District Employee Compensation Reports

In considering issues related to teacher compensation the 57th Legislative Assembly found that data relating to the compensation of school district employees could vary significantly based on the positions that were and were not included, the consistency of definitions, and the consistency of reporting periods. The Legislative Assembly enacted a law that specifically defined administrative and teaching positions and required that compensation data be collected with respect to those positions in a format that differentiated between full-time and part-time personnel, normal and extended school-days, and regular and extended school calendars. The compensation was to include base salary, compensation reportable as gross income under the Internal Revenue Code, any other compensation paid or provided to or on behalf of the individuals, health insurance benefits paid to or on behalf of the individuals, retirement contributions and assessments paid on behalf of the individuals, and any other benefits paid or provided to or on behalf of the individuals.

The Superintendent of Public Instruction, with advice from a number of school district business managers, created a method for collecting and disseminating such data. Although the committee was informed that the compilation of the data created several days worth of work for business managers in the larger districts, it also was informed that the information had proven invaluable to the Education Factfinding Commission in addressing impasses in teacher contract negotiations. This data is collected and transmitted electronically. Because of the detail required, the data allows school personnel, school boards, negotiators, and legislators, among others, to review current and eventually historical information with the ability to accurately compare precisely defined categories of compensation and precisely defined positions.

Requests for Waivers of Accreditation Rules

The Superintendent of Public Instruction received one request for a waiver of an accreditation rule. Because a principal needed to serve as a science teacher, a waiver was sought allowing her to reduce the time she was otherwise required to serve as a principal by one hour

each day. The request was granted by the Superintendent of Public Instruction.

Requests for Waivers Relating to Minimal Instructional Time for High School Units

North Dakota Century Code Section 15.1-06-08.1 precludes the Superintendent of Public Instruction from waiving any statute in whole or in part, with the exception of Section 15.1-21-03, which relates to the minimum time that high school units must be offered. Section 15.1-06-08.1 also requires the Superintendent to file a report with an interim committee indicating whether such a waiver was requested and what action was taken by the Superintendent in response to the request. No requests for waivers of Section 15.1-21-03 were filed.

Student Scores on Mathematics and Reading Tests

North Dakota Century Code Section 15.1-21-08 directs the Superintendent of Public Instruction to administer annual tests to public school students in the areas of reading and mathematics. The tests were aligned to the state content standards and were given to students in grades 4, 8, and 12.

The results became available on October 9, 2002. The results of the mathematics test indicated that among 4th grade students 18 percent were at the advanced level, 38 percent were proficient, 29 percent were partially proficient, and 14 percent were novice. Among 8th grade students 10 percent were advanced, 31 percent were proficient, 46 percent were partially proficient, and 12 percent were novice. Among 12th grade students 13 percent were advanced, 20 percent were proficient, 41 percent were partially proficient, and 25 percent were novice.

The results of the reading test indicated that among 4th grade students 21 percent were advanced, 53 percent were proficient, 18 percent were partially proficient, and 8 percent were novice. Among 8th grade students 16 percent were advanced, 50 percent were proficient, 20 percent were partially proficient, and 13 percent were novice. Among 12th grade students 19 percent were advanced, 32 percent were proficient, 27 percent were partially proficient, and 22 percent were novice.

ELECTRIC INDUSTRY COMPETITION COMMITTEE

The Electric Industry Competition Committee was created by House Bill No. 1237 (1997) to study the impact of competition on the generation, transmission, and distribution of electric energy within this state. The bill was codified as North Dakota Century Code (NDCC) Sections 54-35-18 through 54-35-18.3. Section 54-35-18 states that the Legislative Assembly finds 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 the Legislative Assembly acknowledges this competition has both potential benefits and adverse impacts on the state's electric suppliers as well as on their shareholders and customers and citizens of this state.

North Dakota Century Code 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 electric suppliers. Electric suppliers include public utilities, rural electric cooperatives, municipal electric utilities, and power marketers.

North Dakota Century Code Section 54-35-18.2 outlines the study areas that 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.

In addition to the committee's study of the impact of competition on the generation, transmission, and distribution of electric energy within this state, the Legislative Council directed the committee to review wind energy as a part of its study of electric industry competition and electric suppliers.

Committee members were Representatives Al Carlson (Chairman), Robert Huether, and Matthew M. Klein and Senators Duane Mutch, Larry J. Robinson, and Herb Urlacher.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2002. The Council accepted the report for submission to the 58th Legislative Assembly.

ELECTRIC INDUSTRY RESTRUCTURING

Background

House Bill No. 1237 (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 were promoting electric industry restructuring. Arguments put forward for restructuring or implementing competition in the electric industry included greater customer choice, the possibility

that open competition may lower costs, encourage generating efficiency, and allocate capital. However, risks and challenges of retail competition included 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 came from large industrial and commercial energy users that were opposed to subsidizing residential electricity users. For example, some industrial users were paying 150 percent of the actual cost of providing energy to those users, while residential customers were paying only 60 to 70 percent of the actual cost of providing energy to them.

Traditional Rationale for Regulation

Under the current industry structure, electricity is provided to retail customers by utilities that have geographic monopolies on the provision of electric service within their service territories. Customers within a utility's service territory must purchase all 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 (FERC) governs the pricing of wholesale bulk power sales and transmission services. Although House Bill No. 1237 (1997) directed the committee 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 the corporate limits of any municipality. However, Section 49-03-01.3 exempts electric public utilities from the requirement to 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, which may be generated using a number of methods and fuel such as nuclear, coal, oil, natural gas, hydro, or wind. 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. The utility serving a service territory provides these services and functions 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, these services may remain regulated functions.

The Regulatory Compact

The provision of electric service traditionally exhibits 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.

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 a 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. However, states were allowed 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 (FERC 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 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, FERC Order No. 888 recognizes the right of utilities to recover legitimate, prudent, and verifiable costs stranded by opening the wholesale electricity market, i.e., stranded costs. The order also requires public utilities to 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

Arizona, Connecticut, Delaware, the District of Columbia, Illinois, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Texas, and Virginia have either enacted enabling legislation or issued a regulatory order to implement retail access. Retail access either is available to all or some customers or will soon be available in these states. Some states are running pilot programs, and they will begin to implement retail access in the near future. Arkansas, Montana, Nevada, New Mexico, Oklahoma, and Oregon have either enacted legislation or issued regulatory orders to delay implementing retail access. Although West Virginia has enacted legislation that approved that state's Public Service Commission's plan to restructure and implement retail access, the process is being delayed until a bill for tax reform is enacted. Alabama, Alaska, Colorado, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Utah, Vermont, Washington, Wisconsin, and Wyoming have not enacted enabling legislation to restructure their electric power industries or implement retail access. California has suspended direct retail access.

Oregon, Nevada, Montana, New Mexico, Oklahoma, Arkansas, and West Virginia have recently pulled back from or postponed their original restructuring plans. The National Regulatory Research Institute has classified the status of electric deregulation in the United States into four categories, i.e., retail access proceeding, law passed but delayed or delay likely, studying restructuring, or no action likely. The institute has classified Arizona, Connecticut, Delaware, the District of Columbia, Illinois, Maine, Maryland, Massachusetts, Michigan, Montana, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, and Texas as states where retail access is proceeding. Arkansas, California, Nevada, New Mexico, and Oklahoma are classified as states in which legislation has been enacted but in which it is delayed or likely to be delayed. Florida, Georgia, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Tennessee, Vermont, and Washington are classified as states studying electric industry restructuring. Alabama, Alaska, Colorado, Hawaii, Idaho, Indiana, Iowa, Kansas, North Carolina, South Carolina, South Dakota, Utah, Wisconsin, and Wyoming are classified as states in which electric industry restructuring is not likely.

California discontinued retail access indefinitely in October 2001. In the National Conference of State Legislatures' publication *California's Power Crisis - What Happened? What Can We Learn?* by Matthew H. Brown, the author discusses the electricity restructuring experience in California. The author identifies several major factors as contributing to California's problems and making risk management a crucial step for the power industry. These include:

- For a decade, no company--utility or nonutility--had made a major investment in a new power plant in California.
- For some years, no major investment was made in power plants in the geographical region surrounding California.
- The supply of power diminished in the Pacific Northwest, another area that traditionally had exported power to California.
- Demand for electricity increased somewhat in California and soared in the region surrounding California.
- Emissions trading markets in southern California saw a steep price increase.
- Natural gas prices skyrocketed in 2000.
- Customers have available only crude tools to help them manage their own demand and to respond to price increases in the wholesale power markets.
- Some analysts claim that generators may have charged unreasonably high prices at times of peak loads.

The report concludes by suggesting nine lessons from California's experience:

- Properly functioning retail markets require properly functioning wholesale markets.
- To function properly, wholesale markets need an active demand side, as well as supply side, competition.
- Wholesale markets need adequate generating capacity (supply) complemented by cost-effective end-use energy efficiency.
- Power markets can benefit from a diversity of fuel supplies for generation. Heavy reliance on a single fuel can push wholesale prices up quickly if the price of that fuel increases.
- Power suppliers must be able to manage their own--and their customers'--price risks.
- In states that have vibrant retail markets--or that currently are almost nonexistent--customers will have an opportunity to manage their own price and supply risks.
- Some kind of state oversight of power markets may be required to evaluate energy needs and the ability of the system to meet those needs.
- Some kind of regional oversight and collaboration in power markets also may be required.
- Capping or freezing rates offers important consumer protection in markets in which a commodity is competitively procured but also can affect how quickly a competitive market develops and, absent some flexibility, may affect the financial health of market participants.

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 were introduced in the 106th Congress. However, some dealt with taxation and

other issues and only related tangentially to electric industry restructuring. None became law. At least 48 bills relating directly or indirectly with the issue of restructuring the United States electric power industry have been introduced in the 107th Congress.

Testimony and Committee Activities Restructuring

The committee received testimony that no additional states are likely to enact restructuring legislation, and a number of states that have enacted restructuring legislation have delayed implementation for a period of years or indefinitely. The committee received testimony that there is little reason to consider retail choice legislation in North Dakota and that the committee should focus its attention on other issues that have been identified by the study process.

The committee received testimony from a representative of the state's investor-owned utilities that interest nationally in deregulation is waning and deregulation of the electric industry is not imminent in North Dakota. A representative of Missouri River Energy Services testified there must be vigorous wholesale competition before retail competition can occur and until this occurs the committee should not study the issue of electric industry restructuring any further. In light of agreement between the state's investor-owned utilities, the North Dakota Association of Rural Electric Cooperatives, and representatives of the state's municipal electric utilities that other states are reassessing their restructuring initiatives and because of low-cost and reliable electric service in North Dakota there is no imminent need for restructuring in this state, the committee focused its attention on the taxation of electric utilities, regulation of cooperatives, monitoring the Lignite Vision 21 program, and reviewing the operation of the Territorial Integrity Act as well as conducting its wind energy study.

Taxation of Electric Utilities

Representatives of the North Dakota Association of Rural Electric Cooperatives testified that the association has promoted and continues to support a property tax replacement plan that is fair to utilities and ratepayers, is revenue-neutral, and is easy to administer. However, representatives of the state's investor-owned utilities testified that electric utility taxation issues have been successfully addressed by the Legislative Assembly and any taxation proposal that increases transmission taxes may jeopardize the Lignite Vision 21 program.

The committee began its review of the taxation of the electric utility industry in North Dakota by reviewing a bill draft that had been considered by the 1999-2000 interim Electric Industry Competition Committee but not recommended to the Legislative Council.

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; 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.

After reviewing the proposal that had been developed by the 1999-2000 Electric Industry Competition Committee, the committee requested the electric industry taxation study working group to update the electric utility statistics that had been used to develop that proposal. Updated electric utility statistics contained information on generation, coal conversion taxes paid by plant and year, transmission taxes, electricity sales by utility, electric utility gross receipts taxes paid, electric utility city privilege taxes paid, public utility property taxes paid, electric utility real estate taxes paid, income taxes on electric operations paid, and payments in lieu of taxes paid by municipal power systems. The committee learned that the average for taxes paid during the period 1998 through 2000 was \$29,229,446 per year which compares to approximately \$28 million per year in the three-year period immediately preceding 1998. After receiving this information, the committee invited representatives of the North Dakota Association of Rural Electric Cooperatives, the state's investor-owned utilities, the state's municipal electric utilities, and other interested persons to submit proposals relating to the taxation of electric utilities to the committee. The North Dakota Association of Rural Electric Cooperatives submitted a proposal that was considered by the committee.

This bill draft would have restructured taxation of the electric industry by eliminating property taxes centrally assessed under current law for the state's investor-owned utilities, eliminating the gross receipts tax as currently assessed for the state's rural electric cooperatives, and replacing those taxes by a tax on the transmission and distribution of electricity. The bill draft would have imposed an annual transmission line mile tax on transmission lines based on their nominal operating voltages on January 1 of each year. A tax of \$75 would have been imposed on transmission lines that operate at a nominal operating voltage of less than 50 kilovolts; a tax of \$150 would have been imposed on transmission lines that operate at a nominal operating voltage of 50 kilovolts or more, but less than 100 kilovolts; a tax of \$300 would have been imposed on transmission lines that operate at a nominal operating voltage of 100 kilovolts or more, but less than 200 kilovolts; a tax of \$450 would have been imposed on transmission lines that operate at a nominal operating voltage of 200 kilovolts or

more, but less than 300 kilovolts; a tax of \$600 would have been imposed on transmission lines that operate at a nominal operating voltage of 300 kilovolts or more, but less than 400 kilovolts; and a tax of \$900 would have been imposed on transmission lines that operate at a nominal operating voltage of 400 kilovolts or more.

A distribution company, defined as a company engaged in distribution of electricity for retail sale to consumers in this state through distribution lines and excluding municipal electric utilities, would have been subject to a distribution tax of 54 cents per megawatt-hour for the retail sale of electricity delivered through a distribution line to a consumer and a tax at the rate of ninety-two hundredths of 1 percent of the company's gross revenue from the retail sale of electricity delivered through a distribution line to a consumer. The distribution taxes would not apply to the sale of electricity to a coal conversion facility subject to taxation under NDCC Chapter 57-60. The revenue on transmission lines would be allocated among counties based on the mileages of transmission lines and the rates of tax on those lines within each county. The bill draft contained two alternatives for distribution of the revenue from the distribution company tax. One alternative would have provided that revenue from the distribution company tax would be allocated to the county in which the retail sale to which the tax applied was made. The second alternative would have provided that revenue from the taxes paid by a distribution company would be allocated to each county in which that distribution company's distribution lines are located in the ratio in which the number of miles of its lines in each county bears to the total number of miles of lines of the distribution company in the state. The committee revised the bill draft to provide that the 54 cent per megawatt-hour for the retail sale of electricity tax be distributed to each county in which the distribution company's distribution lines are located in the ratio in which the number of miles of its lines in each county bears to the total number of miles of lines of the distribution company in this state and that the ninety-two hundredths of 1 percent tax of the company's gross revenue from the retail sale of electricity be allocated to the county in which the retail sale to which the tax applied was made.

A representative of the state Tax Commissioner reported that preliminary calculations indicated the total proposed taxes would generate approximately \$800,000 to \$950,000 less per year than the amount levied on distribution and transmission companies in the years 1998 through 2000. The average electric utility taxes for the period 1998 through 2000 was \$13,021,084, while the estimated total proposed tax based on estimated 2002 figures was \$12,205,335. However, the 2002 figure was overestimated by the amount of tax on electricity sold to a coal conversion facility.

A representative of the North Dakota Association of Rural Electric Cooperatives testified that the proposal met the committee's parameters of revenue neutrality and minimization of tax shifts among taxpayers. The committee received testimony that under the proposal, without real estate tax replacement, distribution

cooperatives would pay \$332,065 less in taxes, generation and transmission cooperatives would pay \$158,653 more in taxes, and investor-owned utilities would pay \$130,641 more in taxes. Although the distribution cooperatives would pay less in taxes, Cass County Electric Cooperative and Mor-Gran-Sou Electric Cooperative would pay additional taxes. Among generation and transmission cooperatives, Basin Electric Power Cooperative and Great River Energy would pay more in taxes and among investor-owned utilities, Xcel Energy, Inc., and Otter Tail Power Company would pay less while Montana-Dakota Utilities Company would pay more.

Representatives of the state's investor-owned utilities opposed the proposal because although they pay from \$2.4 million to \$2.5 million in corporate income taxes annually, the proposal did not address corporate income taxes paid by investor-owned utilities. Representatives of the state's investor-owned utilities testified that a taxation system that neither advantages or disadvantages any electric provider and taxes them all equally regardless of how they are organized must consider the corporate income tax. Also, the transmission line mile tax segment of the proposal transfers tax obligations away from the electric cooperatives and shifts them to the state's investor-owned utilities and does nothing to encourage the construction of additional transmission facilities in the state. Also, the committee received testimony that for investor-owned combination utility companies, implementation of the proposal would present administrative burdens. Under current law Montana-Dakota Utilities Company and Xcel Energy, Inc., because they are combination utility companies providing both natural gas and electricity to their customers, are subject to ad valorem taxes on all of their substations, pipelines, distribution lines, tools, trucks, equipment, and office buildings. The committee received testimony that the proposal would subject these companies to the burden of separating common property--property used for both electric and natural gas operations--and subject them to two different tax systems, one for electric operations and one for natural gas operations.

A representative of the Lignite Energy Council testified that that organization is opposed to any increase in transmission taxes because any increase in the transmission tax adds cost to the expense of transporting electricity and thus adds cost to the Lignite Energy Council's primary product making it less competitive.

The committee reviewed a bill draft relating to establishing a property tax exemption for new electric transmission lines. The bill draft would have provided that a transmission line of 230 kilovolts or larger, which is initially placed in service after December 31, 2002, would be exempt from property taxes for the taxable year in which the line is initially put into service, and property taxes as otherwise determined by law on the transmission line would be reduced by 75 percent for the second taxable year of operation of the transmission line, 50 percent for the third taxable year of operation of the transmission line, and 25 percent for the fourth taxable year of operation of the transmission line. The

committee extended the transmission line property tax exemption to existing transmission lines of 230 kilovolts or more that are upgraded so that their carrying capacity is increased 50 percent or more. This proposal was opposed by the Lignite Energy Council because although it would have provided an incentive to construct new transmission facilities, the bill draft would have raised the transmission line mile tax once the tax moratorium expired.

Representatives of Otter Tail Power Company testified that no transmission line owner should be placed at an advantage or disadvantage in the marketplace for new transmission services simply because of its form of ownership. Based on this premise, they proposed changing the taxation method on lines that are 230 kilovolts or larger and built on or after January 1, 2002. They testified that this proposal would not impact the revenue received on transmission lines currently in service; would provide additional revenue for the taxing jurisdictions in which investor-owned utilities built new transmission lines; would equalize new transmission costs for both electric cooperatives and investor-owned utilities; would reduce the transmission costs for exporting excess energy to other utilities, making the cost of this energy more competitive; and would support the Lignite Vision 21 program and the Lignite Energy Council's goal to generate more power from North Dakota lignite and export this power at the most competitive price. This proposal was received too late in the interim for the committee to consider it.

The committee received testimony from a representative of the Utility Shareholders of North Dakota urging the committee to recommend legislation to place all utility organizations on the same taxation footing by repealing all payments made in lieu of personal property taxes for electric cooperatives and placing all electric cooperative property, not included in specific generation or transmission tax codes, on centrally assessed ad valorem tax rolls. The Utility Shareholders of North Dakota also opposed the proposal relating to the taxation of the generation, distribution, and transmission of electric power.

Regulation of Electric Cooperatives

A representative of the Utility Shareholders of North Dakota testified that as rural electric cooperatives continue to serve more and more customers inside city corporate limits, competing utility organizations serving those cities should be treated the same, with both rural electric cooperatives and shareholder-owned utility companies placed under the same regulatory body. All rural electric cooperatives that provide service within corporate city limits should be under the full jurisdiction of the Public Service Commission because taxpayer money is being used to build urban rural electric cooperative infrastructure and there is no third-party oversight of those cooperatives; taxpaying, shareholder-owned utility companies are ready, willing, and able to take on the burden of providing energy and services to new residents as cities expand and thus there is no need to

involve taxpayer investments; lack of Public Service Commission oversight gives cooperatives a competitive advantage over shareholder-owned and regulated utility companies; and without Public Service Commission oversight of cooperatives, many city consumers are being served by an unregulated monopoly unfairly competing with a regulated shareholder-owned utility company.

The president of the Public Service Commission testified that the commission's existing jurisdiction over electric cooperatives is limited and the commission does not have the same broad jurisdiction over cooperatives that it has over investor-owned electric utilities. The commission's jurisdiction over electric cooperatives includes safety, siting of energy conversion and transmission facilities, raising and lowering of electric supply lines, and the Territorial Integrity Act. North Dakota Administrative Code (NDAC) Section 69-09-02-35 requires the installation and maintenance of electric supply lines to comply with the national Electric Safety Code, NDCC Chapter 49-22 requires anyone constructing electric power plants with 50 megawatts or more of generating capacity or electric transmission lines in excess of 115 kilovolts to first obtain a permit from the commission, NDAC Section 69-09-02-36 governs the raising and lowering of electric supply lines when necessary for moving buildings or other bulky objects, and the commission is charged with resolving territorial disputes between electric suppliers under NDCC Chapter 49-03. The commission does not have jurisdiction over rates, contracts, services rendered, adequacy, or sufficiency of facilities, or the rules of electric cooperatives. The president of the Public Service Commission testified that the fiscal impact on the commission of regulating electric cooperatives may be significant but could be reduced if provisions in any regulation-enabling legislation assumed the reasonableness of existing electric cooperative rates. However, if the statutory authorization to adopt existing rates was not included in the legislation, implementation would likely require expensive general rate cases to establish initial rates for each cooperative. The Public Service Commission reported that only Wyoming fully regulates electric cooperatives, that rate regulation in Iowa and Minnesota is voluntary, and cooperatives in Kansas may opt out of rate regulation if they have fewer than 15,000 members. The states of Iowa, Kansas, Minnesota, Montana, Nebraska, North Dakota, South Dakota, and Wyoming have jurisdiction over territorial issues and all site cooperative facilities, but Montana has no further power to regulate electric cooperatives.

A representative of Missouri River Energy Services testified that the commission regulates investor-owned utilities because there is an inherent conflict between investor-owned utility shareholders and consumers, and regulatory bodies were created to oversee this conflict. No such conflict exists between municipal electric utilities and electric cooperatives and their consumers because they are not-for-profit consumer-owned entities that are self-regulated locally by the people they serve in their localities.

A representative of the North Dakota Association of Rural Electric Cooperatives testified that electric cooperatives are operated on a nonprofit basis for the benefit of their consumer-owners. Locally elected boards of directors adopt policies, set rates, and represent the interests of electric consumers. Because the directors are themselves cooperative members, they are in a unique position to understand the service needs of their neighbors. Because the electric cooperative is not in business to make a profit, the cooperative board sets rates to cover costs and provide operating capital. Any margin of income over expenses is returned to the members in the form of capital credits as the financial status of the cooperative allows. Under the cooperative business model, there is no incentive to set rates higher than absolutely necessary. The representative of the North Dakota Association of Rural Electric Cooperatives contrasted this model with investor-owned utilities which are for-profit businesses that attempt to achieve the best possible stock value and income for their shareholders. Without Public Service Commission rate review, the representative testified that an investor-owned utility with substantial monopoly power could set electric rates to generate excessive profits at the expense of electric ratepayers. Finally, the representative testified that if electric cooperatives were subject to regulation by the Public Service Commission, it would increase their cost of doing business, and the increased cost would have to be passed on to their members which would result in increased electricity rates for those members.

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.

LIGNITE VISION 21 PROGRAM

The committee received updates concerning the Lignite Vision 21 program. The Lignite Vision 21 program is a state and lignite-industry initiative to build one or more 500 megawatt lignite-fired power plants in the state. The committee received testimony that this initiative is important because one 500 megawatt power plant means three million more tons of lignite mined in the state, the creation of 1,300 more jobs, an addition of \$140 million in business volume, and an additional \$6 million in tax revenue to the state. To date, the Lignite Vision 21 program has provided over \$1 million for feasibility studies to address environmental, generation, and transmission issues. A representative of the Lignite Energy Council reported that Phase 1 studies were completed on June 30, 2000, and Phase 2 studies were completed on July 1, 2001. Phase 3 studies are scheduled to be completed by June 30, 2003. The Lignite Vision 21 program has provided up to \$10 million in grants for detailed feasibility and permitting assistance for each project and provided over \$26 million of state tax credits for each project. The representative of the Lignite Energy Council reported that a marketplace

analysis shows that the Mid-Continent Area Power Pool projects a 5,000 megawatt generation deficit by 2006, 3,000 megawatts of which is in Minnesota alone.

A representative of the Lignite Energy Council reported that the Lignite Vision 21 program has received three applications--Great River Energy Company, a consortium composed of Montana-Dakota Utilities Company and Westmoreland Coal Company, and Great Northern Power Development. The committee learned that the Lignite Vision 21 program is facing two critical challenges in building projects--environmental and transmission. The four major environmental challenges are the prevention of significant deterioration, mercury emissions, visibility issues, and regional haze issues. Although significant, the representative of the Lignite Energy Council reported that the Lignite Vision 21 program can resolve the environmental issues, but transmission export constraints are the primary challenge to developing new lignite-fired electricity generation in North Dakota.

TERRITORIAL INTEGRITY ACT

Background

In conducting its study of the impact of competition on the generation, transmission, and distribution of electric energy within this state, the committee reviewed the history and operation of the Territorial Integrity Act. 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.

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, 153 N.W.2d 414 (N.D. 1967), 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 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 when "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, said 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 *Johannesson*. The cooperatives maintained any change in the law would result in considerable expense to cooperatives 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 to provide a return to their stockholders, they must also continue to grow, and the only area in which 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.

1999-2000 Study

The 56th Legislative Assembly enacted legislation that required the Electric Industry Competition 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.

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 2000. Of these, 458 applications were granted, 11 applications were denied, 12 applications were withdrawn, and two were pending. The 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.

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.

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

A representative of the state's investor-owned utilities testified that the urgency for the state's investor-owned utilities to find a reasonable alternative to the Territorial Integrity Act is becoming critical. Representatives of the state's investor-owned utilities testified that under the Territorial Integrity Act, if a customer located outside a city's limits wants service from an investor-owned utility, the investor-owned utility must file an application for a certificate of public convenience and necessity to extend service to that customer. However, inside city limits, the process is different. Rural electric cooperatives have no limitations placed on them in extending service to new customers, but investor-owned utilities, even inside the city limits of a community they presently serve, cannot extend service to a new customer if it interferes with an existing rural electric cooperative's service or duplicates the cooperative's facilities. Representatives of the state's investor-owned utilities testified that no such limitation applies to rural electric cooperatives.

A representative of Montana-Dakota Utilities Company said the current Territorial Integrity Act is stifling the opportunity for investor-owned electric utilities to add new customers. The representative testified that while it is true that Montana-Dakota Utilities Company will show growth in electric revenues of 4 percent for 2001, that growth is primarily due to off-system sales into the wholesale market, which although fairly robust for a few years have largely evaporated today--absent off-system sales and the operating efficiencies that Montana-Dakota Utilities Company has implemented, growth of its entire North Dakota electric system has been very minimal, probably in the 1 percent range. Representatives of the state's investor-owned utilities testified that in Fargo and Bismarck, the number of new customers they are adding annually is declining, and soon the areas remaining for the investor-owned utilities in those cities to serve will be fully developed and the number of new customers they will be able to add will be zero. Representatives of the state's investor-owned utilities testified that the Territorial Integrity Act continues to be of urgency to the investor-owned electric providers, and it is an issue that needs to be resolved.

Representatives of the North Dakota Association of Rural Electric Cooperatives pointed out that the committee had not received any testimony from a consumer, a city official, or a representative of the Public Service Commission complaining or finding fault with the Territorial Integrity Act or how it has operated. They testified the Territorial Integrity Act works well for both the state's investor-owned utilities and the state's electric cooperatives. They testified the Act places service decisions where they belong, with local city governing

bodies. They testified the Territorial Integrity Act creates a level playing field with a balanced approach, avoids duplication of expensive electric infrastructure, and thus there is no need to change the Territorial Integrity Act.

Representatives of the North Dakota Association of Rural Electric Cooperatives advocated that the rural electric cooperative enabling law, NDCC Chapter 10-13, be amended to allow electric cooperatives an unlimited right to serve in urban areas and to make urban customers cooperative members, provided that the cooperative purchases or otherwise acquires electric facilities from another utility on a willing buyer-willing seller basis. Under this proposal, sales by investor-owned utilities to cooperatives would be subject to approval by the Public Service Commission and the local franchising authority just as sales of cooperative property to investor-owned utilities are regulated. Proponents of this proposal said that providing more options for local electric service, rather than fewer, supports the idea that territorial integrity issues should be resolved through negotiation rather than legislation.

The committee received testimony from representatives of the state's investor-owned utilities opposing the willing buyer-willing seller proposal submitted by the North Dakota Association of Rural Electric Cooperatives. They testified that this would allow electric cooperatives to purchase much larger investor-owned or municipally owned utility electric systems than allowed under current law. They testified the proposal would encourage electric cooperatives to entice municipalities to acquire by purchase or eminent domain existing electric utilities from investor-owned utilities and an electric cooperative could subsequently repurchase the facilities from the municipality and thereby effectively remove the investor-owned utility from the community in a manner that could not otherwise be accomplished under current law. They testified that electric cooperatives would also have a substantial advantage in competing with investor-owned utilities for the purchase of other investor-owned or municipal-owned electric utilities because investor-owned utility rates are set based upon the net book value of their investment rate base, and the Public Service Commission generally will not allow an acquisition premium in an investor-owned utility's rate base. Representatives of the state's investor-owned utilities testified that if an investor-owned utility attempted to purchase utility assets, it could not bid more than the book value of those assets because it could not recover any excess in its rates, while a rural electric cooperative could bid two or three times the book value of the assets.

The committee received testimony from representatives of the cities of Fargo, Bismarck, and Minot that the franchise agreements they have with the electricity providers in those cities are working well.

Conclusion

The committee makes no recommendation concerning the Territorial Integrity Act.

WIND ENERGY STUDY

Background

In addition to the committee's study of the impact of competition on the generation, transmission, and distribution of electric energy within this state, the Legislative Council directed the committee to review wind energy as part of its study of electric industry competition and electric suppliers.

The National Wind Coordinating Committee estimates that the United States could meet 10 to 40 percent of its electricity demand with wind power. Areas of the United States identified as having significant wind energy potential include areas near the coasts, along ridges of mountain ranges, and in a wide belt that stretches across the Great Plains, including North Dakota. The Great Plains is an especially attractive area for wind energy development because many coastal areas and mountain ridges are unsuitable for wind energy development because of rocky terrain, inaccessibility, environmental protection, or population density. Wind energy can be converted to electricity by using wind turbines. The amount of electricity created depends on the amount of energy contained in wind that passes through a turbine in a unit of time. This energy flow is referred to as wind power density. Wind power density depends on wind speed and air density, with air density being dependent on air temperature, barometric pressure, and altitude. Wind speed, wind shear, and turbine costs determine a site's wind energy potential.

A continued interest in wind energy development in the United States and worldwide has produced steady improvements in technology and performance of wind power plants. In addition to being cost-competitive, wind power projects may offer additional benefits to the economy and the environment. The National Wind Coordinating Committee has indicated that wind energy development carries the economic benefits of job and business creation while supporting local economies and reducing reliance on imported energy. Wind energy may also protect utilities and energy consumers from the economic risks associated with changing fuel prices, new environmental regulations, uncertain load growth, and other cost uncertainties. In addition, the National Wind Coordinating Committee has found the environmental benefits of wind energy development to be substantial by reducing a utility's pollutant emissions, thus easing regulatory pressure and meeting the public's desire for clean power sources. The National Wind Coordinating Committee summarizes the benefits of wind energy as being cost-competitive, creating no air pollution, and benefiting the public health, environment, and the economy. In addition, wind power does not require fuel, create pollution, or consume scarce resources.

Concerning the effect of wind energy development on state and local economies, the National Wind Coordinating Committee has identified several direct economic effects on the economy. Direct effects include increased revenues to local governments and landowners, creation of jobs and demand for local goods and services during

construction and operation, and additional property tax revenues to local governments. Secondary or indirect effects identified by the National Wind Coordinating Committee include increased consumer spending power, economic diversification, and use of indigenous resources.

Rural landowners can reap substantial economic rewards from wind energy development. Rent to landowners is paid because land rights for a wind energy project must be secured in advance by purchase or lease. The National Wind Coordinating Committee estimates that rural landowners may receive \$50 to \$100 per acre from wind energy development projects. In addition, in most cases, farming operations may continue undisturbed. Thus, a landowner is recognizing significant increased income while retaining full use of the land.

Wind power plants generally can be constructed in less than a year. The National Wind Coordinating Committee estimates that for a 50-megawatt wind project, 40 full-time jobs may be created. Operation and maintenance of wind power plants generally require between two and five skilled employees for each 100 turbines. In addition, construction and operation of a wind project creates demand for local goods and services such as construction materials and equipment, maintenance tools, supplies and equipment, and accounting, banking, and legal assistance. These economic benefits are not weakened by heavy demands on state and local infrastructure, and wind projects require little support from public services such as water and sewer systems, transportation networks, and emergency services. Wind energy projects also contribute to economic diversification in a local economy, thus ensuring greater stability by minimizing high and low points of business cycles. The National Wind Coordinating Committee indicates this effect may be particularly important in rural areas that generally have one-dimensional economies.

2001 Wind Energy Legislation

The 57th Legislative Assembly enacted three bills concerning wind energy. House Bill No. 1223 allows installations on property leased by a taxpayer to qualify for a long-form income tax credit for installation of a geothermal, solar, or wind energy device. To qualify for the credit, the device must be installed before January 1, 2011. For a device installed before January 1, 2001, the credit is equal to 5 percent per year for three years, or for a device installed after December 31, 2000, is equal to 3 percent per year for five years, of the actual cost of acquisition and installation of the device.

House Bill No. 1221 provides a sales and use tax exemption for production equipment and tangible personal property used in construction of a wind-powered electrical generating facility before January 1, 2011, if a facility has an electrical energy generation unit with a nameplate capacity of 100 kilowatts or more.

House Bill No. 1222 reduces the taxable valuation of centrally assessed wind turbine electric generators from

10 percent of assessed value to 3 percent of assessed value if the generation unit has a nameplate generation capacity of 100 kilowatts or more and construction is completed before January 1, 2011.

Testimony

Testimony indicated there are approximately 23,000 megawatts of installed wind-generating capacity in the world, of which approximately 4,200 megawatts are installed in the United States. Of the 4,200 megawatts installed in the United States, .4 megawatt of installed capacity is located in North Dakota. North Dakota has the greatest wind energy resource in the United States but is near the bottom of the states that utilize their wind energy resource. California and Texas are the two leading wind-generating states and Texas is on pace to have 2,000 megawatts of installed generating capacity by 2010.

The committee learned that landowners may receive up to \$3,000 to \$4,000 per year per turbine for the use of their land for generating electricity from wind. In addition, the land may still be used for farming or ranching and thus the landowner realizes the additional income without losing use of that land. The committee learned that two challenges facing the wind energy industry are the negotiation of power purchase agreements and the lack of transmission capacity.

Testimony indicated that electricity from wind generation blends well into a utility fuel portfolio, aids in fuel risk management, has a short permitting cycle, is a predictable and reliable source of energy, and is clean. Electricity from wind provides economic, environmental, and energy benefits for North Dakota. These economic benefits include tax, tourism, education, and royalty revenues for local communities and landowners; employment opportunities in construction and operation and maintenance of wind generation facilities; and the use of local contractors and suppliers for services required by wind generation facilities and their employees.

The committee reviewed wind energy incentives enacted in other midwestern states. Minnesota provides property and sales tax incentives and has a mandatory green power option. Minnesota has 320 megawatts of installed wind generation capacity with 220 megawatts planned. Wind energy projects are exempt from property taxation in Wisconsin, and Wisconsin has approximately 50 megawatts of installed wind generation capacity. Montana has no installed wind generation capacity but has 285 megawatts planned for construction. Montana has income tax incentives and a mandatory green power option. Iowa has enacted income and sales tax exemptions for wind energy projects, and Oklahoma provides a state income tax credit as well as property and sales tax exemptions. Texas has enacted income and sales and use tax benefits for wind power generators.

Wind energy proponents testified that the committee should consider extending North Dakota's property tax incentives to large projects, make the income tax credit transferable, and enact a state production tax credit, a

mandatory utility green pricing program, and a nonmandatory renewable portfolio standard.

The committee also reviewed an analysis of the potential economic impact of commercial wind power development in North Dakota prepared for the Griggs/Steele Wind Power Development Group LLC. This study identifies the potential economic impact of commercial wind power development in North Dakota and concludes that wind energy development may offer substantial economic benefits to North Dakota's rural areas as well as to its larger communities. The report indicated that developing a commercial wind farm represents a major construction effort. In addition to providing potential job opportunities for local workers and economic stimulus for businesses in the project area, wind power development represents a major opportunity for firms that manufacture wind turbine towers, blades,

and other components and for the state's engineering and construction firms. During a wind farm's operational period, the site area will benefit from the jobs and payroll represented by the operations and maintenance workforce, approximately 10 workers for a 100 megawatt project, from lease and royalty payments for landowners, approximately \$4,000 for a 1.5 megawatt tower, and from local purchases of supplies, materials, and services. These expenditures represent an ongoing contribution to local and state economies over the life of the facility. In addition, the report noted that wind power development will result in substantial added state and local tax revenues.

Conclusion

The committee makes no recommendation concerning its review of wind energy.

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 (PERS) Board to comply with federal requirements; Section 18-11-15 requires the committee to receive notice from a firefighters' relief association concerning service benefits paid under a special schedule; Section 15-39.1-10.11 requires the committee to receive an annual report from the Teachers' Fund for Retirement (TFFR) Board of Trustees regarding an annual test of actuarial adequacy of the statutory contribution rate to fund an annual postretirement adjustment on June 30, 2001, and again on June 30, 2002; 2001 Session Laws, Chapter 330, Section 5, requires the committee to receive notice from the Public Employees Retirement System Board of the date the board receives a letter ruling from the Internal Revenue Service that the section allowing a member to purchase service credit with pretax or aftertax money does not jeopardize the qualified status of the Highway Patrolmen's retirement system; and 2001 Session Laws, Chapter 494, Section 11, requires the committee to receive notice from the Public Employees Retirement System Board of the date the board receives a letter ruling from the Internal Revenue Service that the section allowing a member to purchase services credit with pretax or aftertax money does not jeopardize the qualified status of the Public Employees Retirement System.

The Legislative Council assigned to the committee a study directed by Senate Concurrent Resolution No. 4017 of the feasibility and desirability of implementing a retirement program for all law enforcement

and correctional officers within the state which provides retirement benefits similar to those provided to the members of the Highway Patrolmen's retirement system pursuant to NDCC Chapter 39-03.1.

Committee members were Representatives Bette Grande (Chairman), Glen Froseth, Joe Kroeber, Wayne W. Tieman, and Francis J. Wald and Senators Ralph L. Kilzer, Karen K. Krebsbach, Stanley W. Lyson, and Tim Mathern.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2002. The Council accepted the report for submission to the 58th Legislative Assembly.

CONSIDERATION OF RETIREMENT AND HEALTH PLAN PROPOSALS

The committee established April 1, 2002, 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 of Trustees used the actuarial services of Gabriel, Roeder, Smith 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 58th 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 Chapter 15-39.1. The plan is managed by the Teachers' Fund for Retirement Board of Trustees.

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 of Trustees 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.

Every certified teacher of a public school in the state participates 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.

An active member contributes 7.75 percent of salary per year. The employer may "pick up" the member's assessments under 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.

A member is 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 years of service is at least 85--the Rule of 85. The monthly retirement benefit is 2.00 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 2.00 percent of final average compensation times years of service, multiplied by a factor that reduces the benefit 6 percent for each year from the earlier of age 65 or the age at which current service plus age equals 85.

A member is eligible for disability retirement benefits provided the member has credit for at least one year of service. The monthly disability retirement benefit is 2.00 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. A member with at least three years of service who does not withdraw contributions from the fund is eligible for a deferred termination benefit. The deferred termination benefit is a monthly benefit of 2.00 percent of final average compensation times years of service. 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 as for normal retirement.

A member leaving covered employment with less than three years of service is eligible to withdraw or receive a refund benefit. Optionally, a vested member (one with three or more years of service) may withdraw assessments plus interest in lieu of the deferred benefits otherwise due. The member who withdraws receives a lump sum payment of employee assessments, plus the interest credited on these contributions. Interest is credited at 6 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 60 payments, the payments will be continued to a beneficiary for the balance of the five-year period; 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. In addition, in 2001 two conditional annual benefit adjustments, equal to .75 percent of the benefit being paid to each retiree and beneficiary, were approved by the Legislative Assembly. The first adjustment became payable beginning with the July 2001 payment, and the second became payable beginning July 2002. These increases were conditional, and were to be paid only if there was positive margin as determined by the prior actuarial valuation, or if the amount of negative margin was small, as defined by the statutes. 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 6 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.

In 2001 an ad hoc cost-of-living adjustment was provided for all retirees and beneficiaries. The ad hoc cost-of-living adjustment 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. Retirees and beneficiaries were also eligible to receive the two conditional annual benefit adjustments equal to .75 percent times the monthly benefit, payable July 1, 2001, and July 1, 2002, as described above. The benefit multiplier was also increased from 1.88 percent to 2.00 percent.

The latest available report of the consulting actuary was dated July 1, 2002. 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. In addition, the report provides information required by the Teachers' Fund for Retirement in connection with Governmental Accounting Standards Board Statement No. 25, and provides various summaries of the data. 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 funds 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, 2002, the employer contribution rate needed in order to meet these goals was 6.09 percent. This is less than the 7.75 percent rate 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 1.66 percentage points. This margin decreased from 3.76 percentage points as of July 1, 2001, mainly because of recognized investment experience losses. If the 7.75 percent contribution rate remains in place, and all actuarial assumptions are exactly realized, including an 8.00 percent investment return on the actuarial value of assets, then the unfunded actuarial accrued liability will be completely amortized in 10.0 years from July 1, 2002. The funded ratio, the ratio of the actuarial value of assets to the actuarial accrued liability, decreased from July 1, 2001. The funded ratio on July 1, 2001, was 96.4 percent while it was 91.6 percent as of July 1, 2002. This decrease is also due to the recognized investment experience losses.

However, the consulting actuary reported that this picture of the Teachers' Fund for Retirement is misleading. All the standard actuarial measurements, including the funded ratio and the margin, are functions of the actuarial value of assets, which recognizes investment gains and losses, the positive or negative difference between the actual net investment return on market value and the assumed 8.00 percent investment return, over a period of five years, at the rate of 20 percent per year. Therefore, 60 percent of the investment losses in fiscal year 2001 and 80 percent of the investment losses in fiscal year 2002 are not yet reflected in the actuarial measurements. As these losses are recognized over the next four valuations, the consulting actuary expects the margin to turn negative and the funded ratio to continue to decrease, in the absence of changes in the benefit and contribution structure of the Teachers' Fund for Retirement and in the absence of other experience gains or losses. The funded ratio would have been 74.4 percent, rather than 91.6 percent, if the market value of assets had been used rather than the actuarial value of assets.

The consulting actuary reported that the second of two .75 percent conditional annual benefit adjustments began to be paid effective in July 2002. Because the margin in the last actuarial valuation was positive, the conditions on which the .75 percent benefit is conditioned were met. This conditional annual benefit adjustment was reflected in the valuation results. Actuarial assumptions and methods are set by the board of trustees, based upon recommendations made by the plan's consulting actuary. These assumptions were last changed in 2000, following an analysis of the plan experience through the preceding five years. The consulting actuary reported that the assumptions are internally consistent and are reasonable based on the actuarial experience of the Teachers' Fund for Retirement.

The fund had 16,433 members on July 1, 2002. Of this total, 9,931 were active members, 5,054 were retired members, 1,223 were inactive vested members, and

225 were inactive nonvested members. The total payroll was \$348.1 million. The average salary was \$35,052 and the average annual retiree benefit was \$13,829. The assets at market value were \$1,165.4 million with an actuarial value of \$1,443.5 million.

The total contributions for the year ending June 30, 2002, were \$56.4 million while benefit payments, refunds, and administrative expenses were \$71.3 million. Therefore, net external cashflow was minus \$14.9 million or -1.3 percent of the market value of assets. The return on the market value of assets was approximately -8.6 percent for the year ending June 30, 2002. This compares to a negative 7.6 percent for the fiscal year ending June 30, 2001. The average return for the last 10 years is 7.9 percent. The consulting actuary reported that to understand the actuarial impact of the market return of minus 8.6 percent, the return must be compared to the 8.0 percent actuarially assumed rate of return. A return of minus 8.6 percent means a loss of 16.6 percent, phased in over five years. To offset a year this bad, the Teachers' Fund for Retirement must earn at least 24.6 percent or 8.0 percent plus 16.6 percent. The consulting actuary reported that in the 1990s, the highest return was approximately 18.5 percent. The actuarial return on the value of assets was 3 percent in fiscal year 2002, compared to 8.6 percent in fiscal year 2001. The fund has averaged a 9.9 percent return on actuarial value over the last 10 years. The actuarial value is 123.9 percent of fair market value, but the fund has \$278.1 million in deferred losses that are not yet recognized. A history of investment return rates for plan years ending beginning June 30, 1990, is contained in the following table:

History of Investment Return Rates		
Plan Year Ending June 30 of	Market	Actuarial
1990	6.7%	7.7%
1991	7.5%	5.8%
1992	12.4%	6.5%
1993	14.7%	8.1%
1994	1.2%	7.0%
1995	13.6%	9.1%
1996	15.6%	11.3%
1997	18.5%	12.6%
1998	13.2%	12.6%
1999	11.5%	13.5%
2000	11.6%	13.35%
2001	-7.6%	8.6%
2002	-8.6%	3.0%

The consulting actuary reported that it has been monitoring assumed investment return rates. Currently, the consulting actuary reported that based on consensus capital market assumptions for 2002 and based on the Teachers' Fund for Retirement's asset allocation policy, the actuarially assumed rate of return of 8.0 percent is still reasonable. However, investment consulting firms have already significantly lowered their expected return assumptions, especially for equities, and if more decreases occur, it may ultimately be necessary to decrease this assumption. The consulting actuary reported that the unfunded actuarial accrued liability

increased from \$53 million to \$132.3 million and the funded ratio, actuarial assets divided by actuarial accrued liability, decreased from 96.4 percent to 91.6 percent. The funded ratio using market value of assets is 74 percent. The consulting actuary reported that the actuarial losses were due to negative investment experience and increased liabilities, which are due mainly to salary increases and retirements. The consulting actuary reported that more of the deferred losses from fiscal years 2001 and 2002 will be recognized next year which will increase the unfunded actuarial accrued liability and decrease the funded ratio and margin. If the market return is 10 percent next year, the expected margin will be minus .29 percent, and if the market return is minus 10 percent the expected margin will be minus 1.50 percent. If the market return for fiscal year 2003 is between a positive 10 percent and a negative 10 percent and the market return for the first five years after fiscal year 2003 is a positive 8 percent, the projected margins for the next five years will still be negative.

The following is a summary of the proposal affecting the Teachers' Fund for Retirement over which the committee took jurisdiction and the committee's action on the proposal:

Bill No. 52

Sponsor: Board of Trustees

Proposal: Changes the definition of salary to include bonus amounts paid to members for performance, retention, experience, and other service-related bonuses, unless amounts are conditioned on or made in anticipation of an individual member's retirement or termination; provides that for purposes of determining vesting of rights and eligibility for benefits in instances of multiple plan membership, a teacher's service credit may not exceed one year of service in the Public Employees Retirement System or the Highway Patrolmen's retirement system in any fiscal year; provides that in instances of multiple plan membership a teacher may elect to have benefits calculated using the three highest certified fiscal year salaries for TFFR in the computation of final average salary, and all service credit earned in TFFR or using the three highest certified fiscal year salaries of TFFR combined with the alternate plan in the computation of final average salary, and service credit not to exceed one year in any fiscal year when combined with the service credit earned in the alternate retirement plan; provides that a teacher who is eligible to participate in TFFR who is also eligible to participate in an alternate retirement system is a member of TFFR for duties covered under TFFR and also a member of the Public Employees Retirement System or Highway Patrolmen's retirement system for duties covered by those alternate retirement systems; updates the benefit limitations under Section 415 of the Internal Revenue Code to those in effect on August 1, 2003; establishes a partial lump sum distribution option; replaces the maximum hours that a retired teacher may return to work with a schedule of from 700 to 1,000 hours based upon the length of the

reemployed retiree's contract; updates the rollover provisions under Section 401 of the Internal Revenue Code to those in effect on August 1, 2003; and provides that TFFR may accept eligible rollovers, direct rollovers, and trustee-to-trustee transfers from eligible retirement plans under Internal Revenue Code Section 402 to purchase refunded service credit and additional service credit.

The committee amended the bill at the request of the TFFR Board of Trustees to allow participating employers to purchase additional service credit on behalf of members under certain conditions.

Actuarial Analysis: The consulting actuary reported that there is no measurable actuarial cost to the bill.

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. The 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 years of 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 a member of the main system is 2.00 percent of final average salary multiplied by years of service. The retirement benefit for a member 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 a member of the National Guard retirement system is 2.00 percent of final average salary

multiplied by years of service. A member of the main system is eligible for an early service retirement at age 55 with three years of service, a member of the judges' retirement system is eligible for early service retirement at age 55 with five years of service, and a member of the National Guard retirement system is eligible for an early service retirement at age 50 with three years of service. The retirement benefit for a member who elects 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 1 percent for each month before age 65. The early service retirement benefit for a member 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 1 percent for each month before age 55. A member of the main system or National Guard retirement system with six months of service who is unable to engage in any substantial gainful activity is eligible for a disability benefit of 25 percent of the member's final average salary at disability with a minimum of \$100 per month. A member of the judges' retirement system with six months of service who is unable to engage in any substantial gainful activity is 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. A member of the main system or the National Guard retirement system is eligible for deferred vested retirement at three years of service, and a member of the judges' retirement system is eligible for deferred vested retirement at five years of service. For a member of the main system or 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 a member 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, a terminating nonvested member and terminated vested member may elect to receive accumulated member contributions with interest. Member contributions through June 30, 1981, accumulate with interest at 5 percent, member contributions from July 1, 1981, through June 30, 1986, accumulate with interest at 6 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" feature; five-year certain and life annuity, 10-year certain and life annuity, or a level Social Security income annuity. The standard form of payment for a member of the judges' system is a monthly benefit for life, with 50 percent payable to an eligible survivor. In addition to the optional forms of payment available to members of the main system and National Guard, a member of the judges' system may elect to receive a life 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 a member of the main system is 4 percent, and the employer contribution is 4.12 percent. The employee contribution for the judges' retirement system is 5 percent and the employer contribution is 14.52 percent. The contribution rate for a member of the National Guard retirement system is 4 percent and the employer contribution is 8.33 percent. A part-time employee in the main system contributes 8.12 percent with no employer contribution. 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 1 percent of the member's salary, whichever is greater, for months one through twelve service credit; \$25 or 2 percent of the member's monthly salary, whichever is greater, for months 13 through 24 of service credit; \$25 or 3 percent of the member's monthly salary, whichever is greater, for months 25 through 36 of service credit; and \$25 or 4 percent of the member's monthly salary, whichever is greater, for service exceeding 36 months. The vested employer contributions may not exceed 4 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 1 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, 2002. According to that report, the combined net assets of the Public Employees Retirement System and Highway Patrolmen's retirement system were \$1,083,368,940 at market value. This compares to \$1,173,621,357 a year earlier. The combined actuarial value of these funds was \$1,189,504,527. Of the combined valuation assets, \$1,129,697,099 is allocated to the Public Employees Retirement System main system, \$18,998,335 to the judges' retirement system, and \$1,305,395 to the National Guard retirement system, and \$39,503,698 to the Highway Patrolmen's retirement fund. The return on the actuarial value of assets for 2001-02 for the Public Employees Retirement System fund was 3.91 percent compared to the investment return assumption of 8.00 percent. As a result, the fund experienced an investment loss on an actuarial value basis of approximately \$45 million. Return on the market value of assets for 2001-02 for the Public Employees Retirement System fund was minus 6.94 percent compared to minus 4.47 percent for the preceding year. The ratio of the actuarial assets to the market value of assets is 109.8 percent. Last year, this ratio was 98.3 percent. This change is an expected result of the actuarial smoothing technique when significant investment losses are experienced.

The actuarial value of assets is determined by spreading market appreciation and depreciation over five years beginning with the year of occurrence. Interest and dividends are recognized immediately. This procedure results in recognition of all changes in market value over five years. This procedure is applied to the combined assets of the Public Employees Retirement System and the Highway Patrolmen's retirement system retirement income funds to determine the combined actuarial value of the systems. The amount of actuarial

write-up or write-down recognizes changing market values and is considered part of the investment income for the year. This procedure treats realized and unrealized capital gains or losses equally. In other words, the sale of a security, either at a gain or loss, has no immediate effect on the value of assets for actuarial purposes. If the market value has gone up, the increase is gradually recognized in the value of the fund's assets, it does not have to be sold for the appreciation to be realized. This automatic recognition of market value appreciation or depreciation eliminates any need for making investment decisions for the explicit purpose of meeting the investment return assumption. The investment returns for the last 10 years for the combined fund are summarized in the following table:

Year Ending June 30	Market Value	Actuarial Value
1993	14.90%	9.42%
1994	1.45%	7.08%
1995	14.25%	8.98%
1996	15.78%	11.65%
1997	19.90%	13.14%
1998	15.65%	14.02%
1999	10.88%	14.72%
2000	9.43%	13.71%
2001	(4.47%)	9.36%
2002	(6.94%)	3.91%

The fund had 17,089 active members on July 1, 2002. Of this total, 17,039 were active members of the main system, 47 were active members of the judges' system, and three were active members of the National Guard system. The total payroll was \$461,344,791 and the average salary was \$26,998. There were 639 inactive members as of July 1, 2002 with vested rights to deferred retirement benefits. The average deferred monthly benefit for this group was \$392. There were also 41 members on leave of absence from the main system and 12 members from the National Guard that were called up for military duty. For these groups, a liability is carried for their deferred retirement benefits.

The contribution requirement consists of the normal cost, and an administrative expense allowance, plus the cost of amortizing the unfunded liability over a scheduled period of years. The Retirement Board has adopted an open amortization schedule of 20 years. The calculated employer contribution requirement is 4.42 percent of payroll. The statutory contribution rate is 4.12 percent of payroll. Thus, statutory contributions are less than the actuarial contribution requirement by .30 percent of payroll, and the margin available in the main system is minus .30 percent of payroll or 4.12% - 4.42% = -.30%.

The report for the judges' retirement system indicated that an employer contribution of 10.29 percent of payroll is required to fund the system. The statutory employer contribution rate is 14.52 percent of payroll. Thus, statutory contributions exceed the actuarial contribution requirement by 4.3 percent of payroll. This results in an actuarial margin of 4.23 percent or 14.52% - 10.29% = 4.23%.

The report for the National Guard retirement system indicated that no employer contribution is required to

fund the system. The contribution rate set by the Retirement Board is 8.33 percent of salary. This results in an actual margin of 8.33 percent of salary or $8.33\% - 0\% = 8.33\%$.

A member of the Highway Patrolmen's retirement system is 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 3.60 percent of final average salary for the first 25 years of service and 1.75 percent for service in excess of 25 years. A member is 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 1 percent for each month before age 55. A member is 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. A member is 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 the date of termination to the 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, 5-year certain and life annuity, and 10-year certain and life annuity. 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. A member contributes 10.30 percent of monthly salary and the state contributes 16.70 percent of 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, 2002. According to that report, the Highway Patrolmen's retirement fund had net assets with an actuarial value of \$39,503,698 and a market value of

\$35,978,913. Total active membership was 125, and an employer contribution of 14.59 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 2.11 percent of payroll.

The latest available report of the consulting actuary for the retiree health insurance credit fund is dated July 1, 2002. According to that report, the fund had net assets with a market value of \$23,652,354 and an actuarial value of \$26,402,058. The rate of return on the market value basis was minus 6.68 percent for the year ending June 30, 2002. On an actuarial basis, the rate of return was 3.60 percent for the year ending June 30, 2002. Total active membership was 17,462 (7,000 males and 10,462 females). The statutory contribution rate is 1.00 percent of payroll. An employer contribution of .98 percent of payroll is required to fund the plan. This results in an actuarial margin of .02 percent of payroll. Members are required to participate in the uniform group insurance program and 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. 28

Sponsor: Senator Elroy N. Lindaas

Proposal: Provides that payments for overtime earned by employees of the North Dakota Mill and Elevator Association must be included as wages and salaries for purposes of calculating benefits under PERS.

The committee amended the bill at the request of the sponsor to provide an appropriation of \$205,000 from the Mill and Elevator fund to the North Dakota Mill and Elevator Association to pay the additional retirement contributions required by the bill.

Actuarial Analysis: The reported actuarial cost impact of the proposal, as amended, is .07 percent of payroll. The actuarial cost impact of the proposal, as amended, is summarized in the following table:

	Valuation Results	Retirement Bill No. 28
Actuarial accrued liability	\$1,087,003,336	\$1,091,041,596
Normal cost	\$40,761,465	\$40,858,321
Required contribution	\$20,210,774	\$20,541,851
Required contribution increase	-	\$331,077
As a percentage of payroll	-	0.07%
Payroll	\$457,027,059	\$458,217,291

Thus, if this bill is enacted, the margin in the Public Employees Retirement System main system will be $-.37\%$ percent ($4.12 - 4.42 = -.30; -.30 + -.07 = -.37$).

Committee Report: Unfavorable recommendation.

Bill No. 53

Sponsor: Retirement Board

Proposal: Changes the definition of governmental unit to exclude the Highway Patrol for members of the Highway Patrolmen's retirement plan; changes the definition of retirement to include termination of participation in the retirement plan and meeting the normal retirement date as well as termination of employment; allows elected officials of participating counties, at their individual option, to enroll in the defined benefit plan within the first six months of their term; allows non-state-appointed officials of participating employers appointed on or after August 1, 1999, who meet the participation requirements of NDCC Chapter 54-52 to enroll in the defined benefit plan effective within the first month of taking office; allows the PERS Board to accept trustee-to-trustee transfers as permitted by Internal Revenue Code Sections 403 and 457 from a Section 403 annuity or Section 457 deferred compensation plan for the purchase of permissive service credit or as repayment of a cashout from a governmental plan; allows the board to establish individual retirement accounts and individual retirement annuities to allow employees to make voluntary employee contributions; provides that for purposes of multiple plan membership, service credit in TFFR, Highway Patrolmen's retirement system, or TIAA-CREF may not exceed 12 months of credit per year; provides that for purposes of determining benefits in multiple plan membership situations an employee may elect to have benefits calculated using the average of the highest salary received by the member for any 36 months employed during the last 120 months of employment in PERS or the average of the highest salary received by the member for any 36 consecutive months during the last 120 months of employment with any of the eligible employers with service credit not to exceed one month in any month when combined with the service credit earned in the alternate retirement system; provides that employees who have dual membership rights may elect to begin participation in an alternate plan or continue participation in PERS; clarifies that a member or a surviving spouse is entitled to receive retiree health benefits beginning on the date retirement benefits are effective unless the premium is billed to the member's employer; and establishes standards for apportioning deferred compensation assets under qualified domestic relations orders.

The committee amended the bill at the request of the Retirement Board to clarify that the purchase provision is available to vested members instead of members with five years of service and to change the reference to prior service to other eligible service; to amend the bill as a result of a July 12, 2002, Attorney General's opinion stating that certain provisions of the retirement statutes are in conflict with the Uniformed Services Employment and Reemployment Rights Act of 1994 to bring the retirement statutes into compliance with federal law; to allow participating employers to purchase additional service credit on behalf of members under certain conditions; to amend the confidentiality provisions of the

retirement statutes to allow the Retirement Board to publish the names of members the Retirement Board has been unable to contact; to provide that former participating members of the defined contribution retirement plan who are receiving retirement benefits or the surviving spouse of a former participating member who is eligible to receive or was receiving defined contribution retirement plan benefits is eligible to receive retiree health benefits; to extend the time period within which a member of the defined contribution retirement plan may waive a refund of the member's vested account balance from 30 days after termination to 120 days after termination; to allow employers of employees participating in the defined contribution retirement plan to make contributions for the conversion of sick leave and for the equivalent of up to five years of service credit unrelated to any other eligible service; and to add a provision to the deferred compensation authorization statute to require alternate payees to transfer to their own plan under a qualified domestic relations order.

The committee amended the bill at the request of the Retirement Board to add a provision clarifying the pretax purchase of service credit to address concerns of the Internal Revenue Service relating to the issuance of a letter ruling on the pretax purchase of service credit.

Actuarial Analysis: The consulting actuary reported that the actuarial impact of the proposal, as amended, is minimal.

Committee Report: Favorable recommendation.

Bill No. 54

Sponsor: Retirement Board

Proposal: Provides a postretirement adjustment of 2 percent of an individual's present benefits on August 1, 2003, and again on August 1, 2004; and provides a prior service retiree adjustment of 2 percent on August 1, 2003, and again on August 1, 2004.

Actuarial Analysis: The reported actuarial cost impact of the proposal to the main system is .22 percent of payroll and 0 percent of payroll for the National Guard retirement system. The actuarial cost impact of the proposal is summarized in the following tables:

	Main System	
	Valuation Results	Retirement Bill No. 54
Actuarial accrued liability	\$1,087,003,336	\$1,101,644,555
Normal cost	\$40,761,465	\$40,763,964
Required contribution	\$20,210,774	\$21,235,087
Required contribution increase	-	1,024,313
As a percentage of payroll	-	0.22%
Payroll	\$457,027,059	\$457,027,059

	National Guard	
	Valuation Results	Retirement Bill No. 54
Actuarial accrued liability	\$941,083	\$950,571
Normal cost	\$11,428	\$11,428
Required contribution	\$0	\$0
Required contribution increase	-	\$0
As a percentage of payroll	-	0.00%
Payroll	\$104,241	\$104,241

Thus, if this bill is enacted, the margin in the Public Employees Retirement System main system will be -.52 percent ($4.12 - 4.42 = -.30$; $-.30 + -.22 = -.52$).

Committee Report: No recommendation as the Retirement Board withdrew the proposal from further consideration by the committee.

Bill No. 55

Sponsor: Retirement Board

Proposal: Provides that participants in the judges' retirement system are entitled to receive a 2 percent postretirement adjustment in their present monthly benefit beginning January 1, 2004, and again on January 1, 2005.

Actuarial Analysis: The reported actuarial cost impact of the proposal is .42 percent of payroll. The actuarial cost impact of the proposal is summarized in the following table:

	Valuation Results	Retirement Bill No. 54
Actuarial accrued liability	\$15,516,530	\$15,753,647
Normal cost	\$892,042	\$892,418
Required contribution	\$433,461	\$451,060
Required contribution increase	-	\$17,599
As a percentage of payroll	-	0.42%
Payroll	\$4,213,491	\$4,213,491

Thus, if this bill is enacted, the margin in the judges' retirement system will be 3.81 percent ($14.52 - 10.29 = 4.23$ - $.42 = 3.81$).

Committee Report: No recommendation as the Retirement Board withdrew the proposal from further consideration by the committee.

Bill No. 56

Sponsor: Retirement Board

Proposal: Provides that for National Guard security officers and firefighters, unless a member specifically requests another option, all retirement benefits must be in the form of an unreduced level Social Security option.

Actuarial Analysis: The reported actuarial cost impact of the proposal is 0 percent of payroll. The consulting actuary noted that if the July 1, 2002 actuarial valuation results required contribution had not been limited to \$0, the required contribution increase would have been \$12,787, or 12.27 percent of payroll. The actuarial cost impact of the proposal is summarized in the following table:

	Valuation Results	Retirement Bill No. 56
Actuarial accrued liability	\$941,083	\$1,075,239
Normal cost	\$11,428	\$14,853
Required contribution	\$0	\$0
Required contribution increase*	-	\$0
As a percentage of payroll*	-	0.00%
Payroll	\$104,241	\$104,241

*If the July 1, 2002, actuarial valuation results required contribution not been limited to \$0, the required contribution increase would have been \$12,787, or 12.27 percent of the payroll.

Committee Report: No recommendation as the Retirement Board withdrew the proposal from further consideration by the committee.

Bill No. 60

Sponsor: Job Service North Dakota

Proposal: Transfers administration of the retirement plan established in 1961 and frozen to new entrants in 1980 for employees of Job Service North Dakota under NDCC Chapter 52-11 from Job Service North Dakota to the PERS Board.

The committee amended the bill at the request of the Retirement Board to add a full-time equivalent (FTE) position to the Public Employees Retirement System to administer the bill's provisions.

Actuarial Analysis: The consulting actuary reported that the proposal would not have an actuarial impact on the Public Employees Retirement System main system.

Committee Report: Favorable recommendation.

Highway Patrolmen's Retirement System

Bill No. 57

Sponsor: Retirement Board

Proposal: Allows the PERS Board to accept trustee-to-trustee transfers as permitted by Internal Revenue Code Sections 403 and 457 from a Section 403 annuity or Section 457 deferred compensation plan for the purchase of permissive service credit or as repayment of a cashout from a governmental plan under Section 415; allows the board to establish individual retirement accounts and individual retirement annuities as permitted under Section 408 of the Internal Revenue Code to allow employees to make voluntary employee contributions; replaces the Rule of 80 with a service requirement of 25 years for normal retirement benefits; requires the board to administer the Highway Patrolmen's plan in compliance with Sections 415 and 401 of the Internal Revenue Code; provides that for the purpose of determining eligibility for benefits in instances of multiple plan membership, a member's years of service is the years of service credit earned in the TIAA-CREF, as well as PERS and TFFR, the total of which may not exceed 12 months of credit per year; provides that in instances of multiple plan membership an employee may elect to have benefits calculated by using the average of the highest salary received by the member for any 36 months employed during the last 120 months of employment in PERS or using the average of the highest salary received by the member for any 36 consecutive months during the last 120 months of employment with service credit not to exceed one month in any month when combined with the service credit earned in the alternate retirement system; provides that certain Highway Patrolmen's retirement system records relating to the retirement benefits of a member or a beneficiary may be disclosed to a member's participating employer, the administrative staff of the Retirement and Investment Office for purposes relating to membership and benefits determination, state or federal agencies, member interest groups approved by the board, the member's spouse or former spouse, legal representative, and judge presiding over the member's dissolution proceeding for purposes of aiding the parties in drafting a qualified domestic relations order, and designated

beneficiaries after the member's death; and provides a postretirement increase in benefits equal to 2 percent of the individual's present benefit with the increase payable beginning August 1, 2003, and again on August 1, 2004.

The committee amended the bill at the request of the Retirement Board to clarify that the purchase provisions are available to vested members; to allow employers to purchase additional service credit on behalf of contributors under certain conditions; to delete the benefit enhancement provisions from the bill; and to add a provision clarifying the pretax purchase of service credit to address concerns of the Internal Revenue Service relating to the issuance of a letter ruling on the pretax purchase of service credit.

Actuarial Analysis: The reported actuarial cost impact to the original proposal is 19.69 percent of payroll. The statutory contribution rate is 16.70 percent of payroll, and the cost of the current plan is 14.59 percent of payroll. Thus, if the proposal is enacted, the margin of the Highway Patrolmen's retirement system will be minus 17.58 percent ($16.70 - 14.59 = 2.11$; $2.11 - 19.69 = -17.58$). As amended, however, the proposal has no actuarial cost.

The actuarial cost impact of the proposal is summarized in the following tables:

25-Year Retirement	Valuation Results	Retirement Bill No. 57
Actuarial accrued liability	\$40,542,300	\$48,304,499
Normal cost	\$1,173,986	\$1,555,857
Required contribution	\$739,968	\$1,663,565
Required contribution increase	-	\$923,597
As a percentage of payroll	-	18.21%
Payroll	\$5,072,832	\$5,072,832

2 Percent Postretirement Increase	Valuation Results	Retirement Bill No. 57
Actuarial accrued liability	\$40,542,300	\$41,444,129
Normal cost	\$1,173,986	\$1,175,268
Required contribution	\$739,968	\$804,189
Required contribution increase	-	\$64,221
As a percentage of payroll	-	1.27%
Payroll	\$5,072,832	\$5,072,832

25-Year Service Retirement and 2 Percent Postretirement Increase	Valuation Results	Retirement Bill No. 57
Actuarial accrued liability	\$40,542,300	\$49,363,542
Normal cost	\$1,173,986	\$1,556,977
Required contribution	\$739,968	\$1,738,596
Required contribution increase	-	\$998,628
As a percentage of payroll	-	19.69%
Payroll	\$5,072,832	\$5,072,832

Committee Report: Favorable recommendation.

Defined Contribution Retirement Plan

Bill No. 18

Sponsor: Representative Francis J. Wald

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 the alternative retirement program

established under NDCC Section 15-10-17(13) are eligible to participate in the defined contribution retirement plan.

Actuarial Analysis: The consulting actuary reported that the past two years of economic downturn changes the picture significantly compared to a study conducted by the firm on a similar proposal in 2000. The contribution rate for the defined benefit retirement plan climbs above 4.12 percent with or without enactment of the optional defined contribution retirement plan, the unfunded actuarial accrued liability of the defined benefit retirement plan increases in either case, and the funded ratio of the defined benefit retirement plan levels out at around 90 percent. Based on assumptions and methods, the defined benefit plan is not harmed by the optional defined contribution program. The contribution rates for the defined benefit plan must increase to a higher level with the optional defined contribution plan, 8.25 percent versus 7.28 percent, but total contributions are somewhat less with a defined contribution plan, 6.86 percent versus 7.28 percent. External cashflow may become an issue in 15 to 20 years but still will not force significant changes to allocation or assumed investment returns in the near future. This picture would not have been as pessimistic if the firm had not assumed 2.0 percent annual ad hoc postretirement benefit increases for the defined benefit plan. However, the consulting actuary identified several issues in technical comments prepared for the bill and recommended that the administrative provision should be modified or additional administrative costs should be appropriated and the eligibility date should be moved up to August 1, 2003, allowing all employees after that date the normal six months to make a decision. The consulting actuary noted that under the present defined contribution retirement plan, Public Employees Retirement System administrative costs are reimbursed in one of two ways--an administrative assessment against assets or nonvested employer contributions. Recognizing that 25 percent of members have 50 percent of the assets, this results in those members paying a higher proportion of the cost. A more equitable method would be to spread the cost against all members by having a portion of the contribution go to paying the administrative assessment. The consulting actuary noted that during the last two offerings of the defined contribution retirement program, one element of determining the actuarial present value was to determine the plan earnings factor. The plan earnings factor, used in increasing the present value of accrued benefits, is the ratio of the market value of assets to the entry age normal assumed liabilities. In the past this has always been positive. Given the present market performance it is possible that the ratio could be negative. The present statute does not anticipate this, and it may be desirable to amend the statute to allow for reducing the present value based upon this ratio. The consulting actuary recommended that the sponsor consider amending the statute to allow for reducing the present value based upon the plan earnings factor if it is negative. The consulting actuary recommended that a

disability benefit other than the member's account balance should be considered. The consulting actuary noted that the existing legislation provides that Public Employees Retirement System administrative costs are charged against the plan investments. At present the Retirement Board has set this amount at .03 percent of assets yearly. This amount is then assessed quarterly. The consulting actuary noted that this process means that larger accounts end up paying a greater share of the costs versus smaller accounts. Consequently, the assessment methodology results in longer-term employees paying more and shorter-term employees paying less and recommended that the sponsor consider an alternative methodology. One such methodology would be to pay administrative costs out of contributions instead of account assets. For example, pursuant to this methodology, the employer contribution would remain at 4.12 percent, but .12 percent would be deposited into the 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. 26

Sponsor: Representative Duane DeKrey

Proposal: Provides that members of the Legislative Assembly are entitled to participate in the defined contribution retirement plan.

Actuarial Analysis: The consulting actuary reported that by allowing members of the Legislative Assembly to participate in the defined contribution retirement plan, members of the Legislative Assembly would also be allowed to participate in the retiree health benefits fund. The overall impact to the system would be minimal.

The actuarial cost impact of the proposal is summarized in the following table:

	Valuation Results	Retirement Bill No. 26
Actuarial accrued liability	\$68,988,084	\$69,247,067
Normal cost	\$2,124,399	\$2,143,167
Required contribution	\$4,653,424	\$4,687,406
Required contribution increase	-	\$33,982
As a percentage of payroll	-	0.01%
Payroll	\$476,449,105	\$479,379,105
The required contribution increase as a percentage of legislator's payroll is 1.6% (\$33,982 / [\$479,379,105 - \$476,499,105]).		

Thus, if this bill is enacted, the margin in the retiree health benefits fund will be .01 percent (.02 - .01 = .01).

Committee Report: Unfavorable recommendation.

Bill No. 58

Sponsor: Retirement Board

Proposal: Provides that former participating members of the defined contribution retirement plan who are receiving retirement benefits or the surviving spouse of a former participating member who was eligible to receive or was receiving defined contribution retirement plan benefits is eligible to receive retiree health benefits; allows temporary employees who previously elected to join the defined contribution retirement plan to elect to participate in the defined contribution retirement plan;

allows participating members to elect to make voluntary contributions to the defined contribution retirement plan; and extends the time period within which a member may waive a refund of the member's vested account balance from 30 days after termination to 120 days after termination.

Actuarial Analysis: The consulting actuary reported that it does not appear that the proposal would have an actuarial impact on the defined benefit plan. However, it appears that this proposal would have an actuarial impact on the retiree health benefits fund. The sponsor withdrew the bill before the committee requested the full actuarial cost analysis of the proposal.

Committee Report: No recommendation as the Retirement Board withdrew the proposal from further consideration by the committee.

Uniform Group Insurance Program

Bill No. 25

Sponsor: Senator Rich Wardner

Proposal: Allows retirees who have accepted a retirement allowance from a political subdivision's retirement plan to elect to participate in the uniform group insurance program without meeting minimum requirements at age 65, when the employee's spouse reaches age 65, upon the receipt of a benefit, or when the spouse terminates employment.

Actuarial Analysis: The consulting actuary reported that it did not have sufficient data to determine the detailed financial impact to the state for this proposed bill. However, the bill could subject the Public Employees Retirement System plan to significant adverse selection depending on the level of benefits and premium cost available to retirees under the political subdivisions' plans compared to those offered through the Public Employees Retirement System plan. To the extent this proves true, the premiums for all participants that remain in the plan will increase. This occurs because if the retirees of the affected political subdivisions have the option of two different plans, they are likely to choose that which benefits them the most. It is likely that those who choose the Public Employees Retirement System plan will have greater than average claims thereby increasing the overall claims cost for all participants. An additional adverse financial impact to the state identified by the consulting actuary occurs as a result of the premium structure. The current premium structure is such that the non-Medicare retiree individual rate is equal to 1.5 times the active rate. Expected actuarial experience would indicate the actual claim relativity of non-Medicare retirees to actives to be approximately 2:1. The implication is that the actives are currently subsidizing the non-Medicare retirees. The proposed bill allows for the retirees of political subdivisions to join the Public Employees Retirement System plan without also requiring the actives of the political subdivisions to join as well. Due to the inherent subsidization in the current rating structure and the potentially substantial increase in the number of retirees, the rates of the current active population would need to increase to reflect the

additional costs not fully reflected in the retiree premiums. One potential approach to permitting this additional group of retirees to participate in the Public Employees Retirement System plan identified by the consulting actuary could be accomplished by amending the proposed bill to require that all members of the political subdivisions, including both actives and retirees, participate in the plan. Such a requirement should minimize any potential adverse financial impact to the Public Employees Retirement System plan. The consulting actuary noted that the adverse selection due to the benefit level differences between the political subdivisions' plans and the Public Employees Retirement System plan could still be present but should be greatly reduced.

Committee Report: No recommendation, but the committee recommended that the sponsor amend the bill to address the concerns of the Retirement Board.

Bill No. 59

Sponsor: Retirement Board

Proposal: Requires permanent employees after August 1, 2003, to be employed at least 20 hours per week as opposed to 17.5 hours per week for those employed before August 1, 2003, to participate in the uniform group insurance program; provides that retirees who have met the initial eligibility requirements for participation in the uniform group insurance program remain eligible as long as they pay the required premium; and deletes the provision that political subdivisions may determine the amount of the employer's monthly contribution toward the total monthly premium amount required of each eligible participating employee under the uniform group insurance program.

The committee amended the bill at the request of the Retirement Board to change the definition of eligible employee to match the definition of eligible employee used for purposes of the retirement plans; to change the bidding statutes to allow the Retirement Board to contract for the providing of hospital benefits coverage, medical benefits coverage, life insurance benefits, and employee assistance program services; to clarify that it is only intended to apply to hospital and medical benefits coverage and not to life insurance benefits, employee assistance program services, vision plans, dental plans, or long-term care plans and the bidding process would still apply to those plans; to allow for self-administration of the uniform group insurance program; to allow the Retirement Board to develop an independent provider network; to authorize the Retirement Board to establish incentives for employer-based wellness programs; to amend the uniform group insurance program confidentiality statutes to comply with the federal Health Insurance Portability and Accountability Act; and to appropriate \$132,561 from the general fund to the Retirement Board to implement the bill and authorize the Public Employees Retirement System one additional full-time employee to implement the bill.

Actuarial Analysis: As originally proposed, the consulting actuary did not believe the bill would have any

significant adverse financial impact on the program. Under the amended bill, the actuarial consultant identified the self-administration of a self-insured health program, development and maintenance of a provider network, and implementation of an employer-based wellness program as issues to be considered by the Retirement Board.

Committee Report: Favorable recommendation.

Bill No. 69

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 PERS Board.

Actuarial Analysis: The actuarial consultant identified adverse risk selection as an issue that must be considered when changing eligibility requirements but noted that the bill provides for a number of safeguards against adverse risk selection, including minimum requirements as established by the Retirement Board and a minimum participation period of 60 months for private sector employer groups.

Committee Report: Unfavorable recommendation.

Old-Age and Survivor Insurance System

Bill No. 61

Sponsor: Job Service North Dakota

Proposal: Increases primary insurance benefits under the Old-Age and Survivor Insurance System (OASIS) fund and appropriates \$3,800 from the general fund to Job Service North Dakota to pay Old-Age and Survivor Insurance System benefits to remaining beneficiaries.

The committee amended the proposal at the request of Job Service North Dakota to transfer administration of the Old-Age and Survivor Insurance System from Job Service North Dakota to the Retirement Board and to remove the appropriation.

Actuarial Analysis: Job Service North Dakota reported the fund has sufficient assets to pay for the proposed increase.

Committee Report: Favorable recommendation.

ADDITIONAL COMMITTEE RESPONSIBILITIES

The Public Employees Retirement System Board reported 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. The Teachers' Fund for Retirement

reported that both conditional annual benefit adjustments authorized by Section 15-39.1-10.11 became effective, one payable July 1, 2001, and the second payable on July 1, 2002. The committee was not notified by the Public Employees Retirement System Board that it received a letter ruling from the Internal Revenue Service that the section allowing a member to purchase service credit with pretax or aftertax money does not jeopardize the qualified status of the Highway Patrolmen's retirement system, nor that the board received a letter ruling from the Internal Revenue Service that the section allowing a member to purchase service credit with pretax or aftertax money does not jeopardize the qualified status of the Public Employees Retirement System.

LAW ENFORCEMENT AND CORRECTIONAL OFFICER RETIREMENT PROGRAM STUDY

Senate Concurrent Resolution No. 4017 directs a study of the feasibility and desirability of implementing a retirement program for all law enforcement and correctional officers within the state of North Dakota which provides retirement benefits similar to those provided to the members of the Highway Patrolmen's retirement system pursuant to NDCC Chapter 39-03.1. The resolution noted that recruiting and retaining quality law enforcement and correctional officers within the state of North Dakota are integral to maintaining the safety and quality of life of all North Dakota residents; that the nature of the work performed by law enforcement and correctional officers takes a physical toll on those officers which exceeds that experienced by workers in the vast majority of occupations and necessitates that law enforcement and correctional officers leave their employment at a younger age than for most occupations; and that other than for members of the Highway Patrolmen's retirement system, a retirement program does not exist that is uniform across the state which allows law enforcement and correctional officers to retire at an age at which they might enjoy their retirement prior to experiencing the physical effects of their work as law enforcement and correctional officers.

North Dakota Highway Patrolmen's Retirement System

The North Dakota Highway Patrolmen's retirement system is governed by NDCC Chapter 39-03.1. A member of the Highway Patrolmen's retirement system is 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 3.6 percent of final average salary for the first 25 years of service and 1.75 percent for service in excess of 25 years. A member is 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 1 percent for each

month before age 55. A member is 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 Public Employees Retirement System Board based upon the increase in final average salary from the date of termination to the 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, 5-year certain and life annuity, and 10-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.

Law Enforcement and Correctional Officer Retirement Programs in Surrounding States South Dakota

The laws governing the South Dakota retirement system are codified in South Dakota Codified Laws Annotated Chapter 3-12. The South Dakota retirement system is composed of Class A members and Class B members. Class A members are all members other than Class B members, and Class B members are justices, judges, state law enforcement officers, magistrate judges, municipal police officers, municipal firefighters, county sheriffs, deputy county sheriffs, Penitentiary correctional staff, parole agents, air rescue firefighters, campus security officers, court services officers, conservation officers, and park rangers.

Air rescue firefighters are employees of the Department of Military and Veterans Affairs who are stationed

at Joe Foss Field, Sioux Falls, and who are directly involved in firefighting activities on a daily basis. Campus security officers are employees of the South Dakota Board of Regents whose positions are subject to the minimal educational training standards established by the South Dakota Law Enforcement Standards Commission and who satisfactorily complete the training required within one year of employment and whose primary duty as sworn law enforcement officers is to preserve the safety of the students, faculty, staff, visitors, and property of the University of South Dakota and South Dakota State University. Conservation officers are employees of the South Dakota Department of Game, Fish and Parks and the Division of Wildlife or Division of Custer State Park. Deputy county sheriffs are employees of a county that is a participating governmental unit, appointed by the board of county commissioners, who are permanent full-time employees and whose positions are subject to the minimum educational training standards established by the South Dakota Law Enforcement Standards Commission. Deputy county sheriffs do not include jailers or clerks unless the participating governmental unit has requested that the jailer be considered as a deputy county sheriff and the South Dakota Retirement System Board of Trustees has approved the request. Law enforcement officers are agents of the State Division of Criminal Investigation, officers of the South Dakota Highway Patrol, municipal policemen, county sheriffs, deputy county sheriffs, or municipal firemen. Park rangers are employees of the Department of Game, Fish and Parks within the Division of Parks and Recreation, whose positions are subject to the requirements as to education and training provided by South Dakota law, and whose primary duty is law enforcement in the state park system. Parole agents are employees of the South Dakota Department of Corrections who are actually involved in direct supervision of parolees on a daily basis. Penitentiary correctional staff include the warden, deputy warden, guards, correctional supervisors, correctional officers, and their immediate supervisors of the South Dakota State Penitentiary and any other classification of Penitentiary employees approved by the South Dakota Retirement System Board of Trustees. Policemen are employees of the police department of a participating municipality holding the rank of patrolman, including probationary patrolmen, or higher rank, and whose position is subject to the minimum educational and training standards established by the South Dakota Law Enforcement Officers Standards Commission. A policeman does not include any person employed by a municipality whose service as a policeman requires less than 20 hours per week and six months per year. If a municipality that is a participating governmental unit operates a city jail, the participating unit may request that jailers be considered policemen, subject to the approval of the board of trustees.

The required member contribution for Class B members is 8 percent of compensation which is matched by the employer. However, the employer is required to pay the member's contribution. The normal

retirement age for a Class B member is age 55. The normal retirement allowance for a Class B member other than a justice, judge, and magistrate judge is 2.325 percent of final compensation for each year of Class B credited service other than as a justice, judge, or magistrate judge before July 1, 2002, plus 2 percent of final compensation for each year of Class B credited service other than as a justice, judge, or magistrate judge after July 1, 2002. The normal retirement allowance for a Class A member is the larger of 1.625 percent of final compensation for each year of Class A credited service before July 1, 2002, plus 1.3 percent of final compensation for each year of Class A credited service after July 1, 2002, or 2.325 percent of final compensation for each year of Class A credited service before July 1, 2002, plus 2 percent of final compensation for each year of Class A credited service after July 1, 2002, less other public benefits.

For purposes of determining the benefits of Penitentiary correctional staff for credited service earned prior to July 1, 1978, benefits are calculated the same as for Class A members, and for credited service after July 1, 1978, benefits are calculated the same as for Class B members. For purposes of determining the benefits of county sheriffs and deputy county sheriffs for credited service earned before January 1, 1980, benefits are calculated the same as for Class A members, and for credited service after January 1, 1980, benefits are calculated using the formula for Class B members. For purposes of determining the benefits of parole agents for credited service earned before July 1, 1991, benefits are calculated using the formula applicable to Class A members, and for credited service after June 30, 1991, benefits are calculated using the formula applicable to Class B members. For purposes of determining the benefits of air rescue firefighters for credited service earned before July 1, 1992, benefits are calculated the same as for Class A members and for credited service after June 30, 1992, benefits are calculated using the formula applicable to Class B members.

South Dakota Codified Laws Annotated Section 3-12-92.6 provides for adjustments in allowance for retirees based on time and circumstances of retirement. Each member who retired before July 1, 2000, and each beneficiary of a deceased member who retired before July 1, 2000, is entitled to receive a retirement allowance based on the current law as applicable based on the member's final compensation, credited service, and other public benefits at retirement and the benefit formulas contained in current law when improved by the improvement factor from the date of retirement to July 1, 2000. In addition, each member or beneficiary of a member who retired before July 1, 1974, who is receiving benefits pursuant to a prior consolidated system is entitled to have that person's benefit increased by an additional 2 percent on July 1, 2000, in lieu of the increase provided in Section 3-12-92.6.

South Dakota Codified Laws Annotated Section 3-12-99 provides that the disability allowance for the first 36 months of the period of disability is 50 percent of the

highest annual compensation earned in any one of the three years immediately preceding the date of disability, increased by 10 percent of compensation for each child to a maximum of four children. Beginning with the 37th month of disability, if the member is eligible for and receiving disability benefits from Social Security, the disability allowance is equal to the greater of the amount paid during the first 36 months less the amount of primary Social Security or the amount of a member's unreduced accrued retirement allowance as of the date of disability. The annual amount of a disability allowance may not be less than 20 percent of the compensation on which the initial disability allowance was based. Beginning with the 37th month of disability, if the member is not eligible for and receiving disability benefits from Social Security, the disability allowance is equal to the greater of 20 percent of the compensation on which the initial disability allowance was based or the amount of the member's unreduced accrued retirement allowance as of the date of disability.

Final compensation is the highest average annual compensation earned by a member during any period of 12 consecutive calendar quarters during the member's last 40 calendar quarters of membership in the system, including time during which the member was not a member but for which the member received credit under the system. However, if the compensation received in the last calendar quarter considered exceeds 125 percent of the amount in the highest previous calendar quarter or if the average compensation received in the last four calendar quarters exceeds 115 percent of the amount earned in the highest calendar quarter prior to the last four calendar quarters considered, only the lesser amount may be considered in computing the final compensation and the excess must be excluded in the computation.

Montana

The Montana Public Employees Retirement Board administers eight separate and distinct retirement systems. Four of the systems, excluding two firefighters' systems, may be characterized as public safety retirement systems--the Game Wardens' and Peace Officers' Retirement System, the Sheriffs' Retirement System, the Highway Patrol Officers' Retirement System, and the Municipal Police Officers' Retirement System.

The Sheriffs' Retirement System is governed by Montana Code Annotated Chapter 19-7. The Sheriffs' Retirement System is a multiple-employer, cost-sharing defined benefit plan that covers all Montana sheriffs and Department of Justice criminal investigators hired after July 1, 1993. The plan was established in 1974. Member rights are vested after five years of service.

For purposes of the Sheriffs' Retirement System, a sheriff is any elected or appointed county sheriff or undersheriff or any appointed, lawfully trained, appropriately salaried, and regularly acting deputy sheriff. An investigator is a person who is employed as a criminal investigator or as a gambling investigator for the Department of Justice. Each member is required to contribute 9.245 percent of the member's monthly compensation,

and each employer is required to contribute monthly 9.535 percent of each member's gross compensation. However, the employer is required to pick up and pay the contributions for the member. A member who has completed at least 20 years of membership service may retire on a service retirement benefit. The amount of the service retirement benefit granted to a member is 2.5 percent of the member's final average salary for each year of service credited.

A member is entitled to a disability benefit based on the actuarial equivalent of the member's service retirement benefit standing to the member's credit at the time of the member's disability retirement. However, if the disability is a direct result of the member's service as a member in the line of duty, then the member is entitled to a benefit of one-half of the member's final average salary. A member is entitled to a postretirement annual benefit adjustment of 1.5 percent of the member's permanent monthly benefit.

The Game Wardens' and Peace Officers' Retirement System is governed by Montana Code Annotated Chapter 19-8. The Game Wardens' and Peace Officers' Retirement System is a multiple-employer, cost-sharing defined benefit plan that covers state game wardens and state peace officers not eligible to join the Public Employees Retirement System, Sheriffs' Retirement System, Highway Patrol Officers' Retirement System, or the Municipal Police Officers' Retirement System. This plan was established in 1963. Member rights are vested after five years of membership service.

Eligible members of the Game Wardens' and Peace Officers' Retirement System include game wardens who are assigned to law enforcement in the Department of Fish, Wildlife, and Parks; motor carrier officers employed by the Department of Transportation; campus security officers employed by the University System; wardens and deputy wardens employed by the Department of Corrections; corrections officers employed by the Department of Corrections; probation and parole officers employed by the Department of Corrections; stock inspectors and detectives employed by the Department of Livestock; motor vehicle inspectors employed by the Department of Justice; and drill instructors employed by the Department of Corrections. Game wardens include state fish and game wardens hired by the Department of Fish, Wildlife, and Parks and include all warden supervisory personnel whose salaries or compensation is paid out of Department of Fish, Wildlife, and Parks money. Motor carrier officers are defined as employees of the Department of Transportation appointed as a peace officer, and a peace officer or a state peace officer is defined as a person who by virtue of that person's employment with the state is vested by law with a duty to maintain public order or make arrests for offenses while acting within the scope of that person's authority or who is charged with specific law enforcement responsibilities on behalf of the state.

Each member is required to contribute 8.5 percent of the member's monthly compensation between July 1, 2001, and September 30, 2001. Beginning October 1, 2001, the member contribution is increased to

10.56 percent of the member's monthly compensation. State employers are required to contribute 9 percent of the total compensation paid to their covered employees. However, the employer is required to pick up and pay the member's contribution. A member who has completed at least 20 years of membership service and reached age 50 is entitled to a service retirement benefit of 2.5 percent of the member's final average salary for each year of service credit. A member who is determined by the Montana Public Employees Retirement Board to be disabled is entitled to a disability retirement benefit in an amount calculated based on the actuarial equivalent of the service retirement benefits standing to the member's credit at the time of the member's disability retirement. However, if the disability is a direct result of service to the state in the line of duty and the member has at least five years of membership service, the member who is disabled must be retired on a disability retirement benefit of not less than one-half of the member's final average salary. An eligible recipient is entitled to a guaranteed annual benefit adjustment of 1.5 percent of the member's permanent monthly benefit.

The Municipal Police Officers' Retirement System is governed by Montana Code Annotated Chapter 19-9. The Municipal Police Officers' Retirement System is a multiple-employer, cost-sharing defined benefit plan that covers police officers employed by first-class and second-class cities and other cities that wish to adopt the plan. The plan was established in 1975. Membership rights are vested after five years of membership service.

A member's contribution is based upon the date the member was first employed as a police officer. For members first employed on or before June 30, 1975, the contribution rate is 5.8 percent; for members first employed after June 30, 1975, the contribution rate is 7 percent; for members first employed after June 30, 1979, but before July 1, 1997, the contribution rate is 8.5 percent; and for members first employed on and after July 1, 1997, the contribution rate is 9 percent. The employer contribution is 14.41 percent of the compensation paid to all active members. The employer is required to pick up and pay the member contributions. In addition to the member and employer contribution, the state of Montana contributes 29.3 percent of compensation paid to members of the Municipal Police Officers' Retirement System. A member is eligible to receive a service retirement benefit when the member has completed 20 years or more of membership service and has terminated service. A member who terminates service after completing at least five years of membership service but before completing 20 years of membership service is eligible to receive a service retirement benefit when the member has reached age 50. The monthly benefit formula is 2.5 percent of final average compensation for each year of service credit. If a member is determined by the Montana Public Employees Retirement Board to be disabled, the member is entitled to a disability retirement benefit regardless of the length of the member's service, commencing on the day following the member's

termination from service. A member who becomes disabled before earning 20 years of service credit is entitled to receive a disability retirement benefit equal to one-half of the member's final average compensation. A member who becomes disabled but who, at the time of the member's injury or disability, was eligible at the member's option to be retired but had elected to serve years in excess of 20 years of service credit and was then serving additional years is entitled to be paid for the additional years. A retiree is entitled to a guaranteed annual benefit adjustment of 1.5 percent of the retiree's permanent monthly benefit.

The Highway Patrol Officers' Retirement System is governed by Montana Code Annotated Chapter 19-6. The Highway Patrol Officers' Retirement System is a single-employer, defined benefit plan that covers all Montana Highway Patrol officers, including supervisory personnel. The plan was established in 1971. Member rights are vested after five years of membership service.

All members of the Montana Highway Patrol, including the supervisor and assistant supervisors, are required to be members of the Highway Patrol Officers' Retirement System. Members hired before July 1, 1997, are required to contribute 9 percent of the member's monthly compensation, and members hired after June 30, 1997, are required to contribute 9.05 percent of the member's monthly compensation. The state is required to contribute 36.33 percent of the total compensation paid to the members, 26.15 percent of this amount is payable from the same source that is used to pay compensation to the members, and 10.18 percent is payable from a portion of the fees from driver's licenses and duplicate driver's licenses. However, the state is required to pick up and pay the member contributions. A member is eligible to receive a service retirement benefit after completing 20 years or more of membership service. The service retirement benefit is 2.5 percent of the member's final average salary for each year of service credit. A member is entitled to a disability retirement benefit that is the actuarial equivalent of the service retirement benefit standing to the member's credit at the time of the member's disability retirement. However, if the disability is a direct result of service to the Montana Highway Patrol in the line of duty, then the member who is disabled must be retired on a disability retirement benefit of one-half of the member's final average salary regardless of the member's length of service. A retiree is entitled to a guaranteed annual benefit adjustment of 1.5 percent.

Minnesota

Minnesota has several retirement systems governing various categories of public safety personnel. These include the correctional plan within the Minnesota state retirement system, the State Patrol plan within the Minnesota state retirement system, the police and fire plan within the Minnesota Public Employees Retirement Association, and the correctional plan within the Minnesota Public Employees Retirement Association.

The Minnesota correctional plan within the Minnesota state retirement system is governed by Minnesota Statutes Sections 352.90 through 352.97. Section 352.90 outlines the legislative policy concerning correctional employees. This section states that it:

Is the policy of the legislature to provide special retirement benefits and contributions for certain correctional employees who may be required to retire at an early age because they lose the mental or physical capacity required to maintain the safety, security, discipline, and custody of inmates at state correctional facilities or of patients at the Minnesota security hospital or at the Minnesota sexual psychopathic personality treatment center or of patients in the Minnesota extended treatment options on-campus program at the Cambridge regional human services center.

Employees employed at a state correctional facility, the Minnesota security hospital, or the Minnesota sexual psychopathic personality treatment center as a corrections officer 1, corrections officer 2, corrections officer 3, corrections officer supervisor, corrections officer 4, corrections captain, security counselor, or security counselor lead are eligible members. In addition, employees employed at correctional facilities as maintenance or trade personnel, special teachers, security guards, nursing personnel, and various other classifications of employment are members.

Employees are required to contribute 5.69 percent of salary and employers are required to contribute 7.98 percent of salary. Employees who have reached age 55 and have credit for at least three years of covered correctional service are entitled to a retirement annuity based on covered correctional service. The monthly annuity is determined by multiplying the average monthly salary by the number of years or completed months of covered correctional service by 2.4 percent. A covered correctional employee who is at least 50 years old and who has at least three years of allowable service is entitled to early retirement at a retirement annuity reduced by two-tenths of 1 percent for each month that the correctional employee is under age 55 at the time of retirement. A covered correctional employee who has become disabled and physically unfit to perform the duties of the position as a direct result of injury, sickness, or other disability incurred in or arising out of an act of duty is entitled to a disability benefit based on covered correctional service. The disability benefit is 50 percent of the average salary plus an additional percent equal to 2.4 percent for each year of covered correctional service in excess of 20 years, 10 months, prorated for completed months. A covered correctional employee who has at least one year of covered correctional service and who becomes disabled and physically or mentally unfit to perform the duties of the position because of sickness or injury occurring while not engaged in covered employment is entitled to a disability benefit based on covered correctional service only.

The Minnesota State Patrol plan is governed by Minnesota Statutes Chapter 352B. Eligible members

include state troopers, conservation officers currently employed by the state, crime bureau officers, certain employees of the Department of Public Safety, and public safety employees defined as peace officers and employed with the Division of Alcohol and Gambling Enforcement. Members are required to contribute 8.40 percent of salary while employers are required to pay 12.60 percent of salary. Members who are credited with three or more years of allowable service are entitled to normal retirement at age 55. The normal retirement annuity is determined by multiplying the average monthly salary of the member by 3 percent for each year and pro rata for completed months of service. A member who is age 50 and who has at least three years of allowable service is entitled to an early retirement benefit equal to the normal retirement annuity reduced by one-tenth of 1 percent for each month the member is under age 55 at the time of retirement. A member who becomes disabled and physically or mentally unfit to perform duties as a direct result of an injury, sickness, or other disability incurred in or arising out of an act of duty is entitled to receive a disability benefit while disabled. The disability benefit is equal to the member's average monthly salary multiplied by 60 percent, plus an additional 3 percent for each year and pro rata for completed months of service in excess of 20 years. If a member with at least one year of service becomes disabled because of sickness or injury occurring while not on duty and not engaged in state work, the member is entitled to a disability benefit based upon the normal retirement annuity. However, if the member with a non-work-related disability has less than 15 years of service, the disability benefit must be computed as though the member had 15 years of service.

The Minnesota Public Employees Retirement Association includes a police and fire retirement plan and a correctional plan. The police and fire plan is governed by Minnesota Statutes Sections 353.63 through 353.88. Section 353.63 outlines the policy of the state regarding retirement benefits for public safety personnel. This section provides that it:

Is the recognized policy of the state that special consideration should be given to employees of governmental subdivisions who devote their time and skills to protecting the property and personal safety of others. Since this work is hazardous, special provisions are hereby made for retirement pensions, disability benefits and survivors benefits based on the particular dangers inherent in these occupations. The benefits provided . . . are more costly than similar benefits for other public employees since they are computed on the basis of a shorter working lifetime taking into account experience which has been universally recognized. This extra cost should be borne by the employee and employer alike at the ratio of 40 percent employee contributions and 60 percent employer contributions.

The police and fire plan was established in 1959. Beginning in 1980, all new police officers and firefighters

in Minnesota were automatically enrolled in the police and fire plan. In 1987 the Public Employees Retirement Association police and fire consolidated plan was formed, and most of Minnesota's local police and fire relief associations joined. This plan was merged into the Public Employees Retirement Association police and fire plan in 1999. The Public Employees Retirement Association police and fire plan has more than 10,000 members.

Full-time police officers or persons in charge of a designated police or sheriff's department who by virtue of that employment are required by the employing governmental subdivision to be and are licensed by the Minnesota Peace Officer Standards and Training Board and who are charged with the prevention and detection of crime, who have the full power of arrest, who are assigned to a designated police or sheriff's department, and whose primary job is the enforcement of the general criminal laws of the state, and full-time firefighters or persons in charge of a designated fire company or companies who are engaged in the hazards of fire-fighting are eligible to join the police and fire plan. Other employees that may be eligible to be members of the police and fire plan include certain public safety employees of the Metropolitan Airports Commission, certain metropolitan transit police officers, certain State Military Affairs Department firefighters, certain sheriffs' association employees, Hennepin County paramedics and emergency medical technicians, and certain tribal police officers exercising state arrest powers.

Employees are required to contribute 6.2 percent of total salary, and employers are required to contribute 9.3 percent of the total salary of each member. Upon separation from public service, a police officer or firefighter member who has attained age 55 and who has received credit for not less than three years of allowable service is entitled to a normal retirement annuity. The normal retirement annuity is the average salary multiplied by 3 percent per year of allowable service. A police officer or firefighter who is at least 50 years old and who has at least three years of allowable service is entitled to an early retirement annuity equal to the normal annuity reduced by one-tenth of 1 percent for each month that the member is under age 55 at the time of retirement. If a member becomes disabled in the line of duty, the member is entitled to a disability benefit of 60 percent of the average salary plus an additional 3 percent of average salary for each year of service in excess of 20 years. However, if the disability occurs before the member has at least five years of allowable service credit in the police and fire plan, the disability benefit is computed on the average salary from which deductions were made for contributions to the police and fire fund.

Recognizing the special, demanding nature of the work correctional officers perform every day in inmate facilities across the state of Minnesota, the Minnesota Legislature created a new Public Employees Retirement Association plan for correctional officers in 1999. This plan has over 2,500 members. The correctional plan is governed by Minnesota Statutes Chapter 353E. The

Public Employees Retirement Association correctional plan covers local government correctional service employees. Eligible members are employees employed in a county correctional institution as a correctional guard or officer, a joint jailer/dispatcher, or as a supervisor of correctional guards or officers or of joint jailers/dispatchers; directly responsible for the direct security, custody, and control of the county correctional institution and its inmates; expected to respond to incidents within the county correctional institution as part of that person's regular employment duties and is trained to do so; and is a public employee but not a member of the public employees police and fire fund. A county correctional institution is defined as a jail administered by a county, a correctional facility administered by a county, or regional correctional facility administered by or on behalf of multiple counties.

Members are required to contribute 6.01 percent of salary, and employers are required to contribute 9.02 percent of salary. Employees who have attained at least age 55 and have credit of not less than three years of coverage in the local government correctional service plan are entitled to a normal retirement annuity. The normal retirement annuity is the employee's average salary multiplied by 1.9 percent for each year of allowable service. An employee who has attained at least age 50 and has credit for not less than three years of coverage in the local government correctional service plan is entitled to a reduced retirement annuity equal to the normal annuity amount reduced so that the reduced annuity is the actuarial equivalent of the annuity that would be payable if the employee deferred receipt of the annuity from the day the annuity begins to accrue until age 55. A member who becomes disabled and physically or mentally unfit to perform the duties of the position as a direct result of an injury, sickness, or other disability that was incurred or arose out of any act of duty entitled to a disability benefit. The disability benefit is based on covered service and is an amount equal to 47.5 percent of the average salary plus an additional 1.9 percent for each year of covered service in excess of 25 years. A local government correctional employee who has at least one year of covered service and who becomes disabled and physically or mentally unfit to perform the duties of the position because of sickness or injury that occurs while not engaged in covered employment is also entitled to a disability benefit. This disability benefit must be computed in the same manner as the normal retirement annuity as though the employee had at least 10 years of covered correctional service.

Kansas

Kansas has one retirement plan that may be characterized as a law enforcement retirement plan. Kansas Statutes Annotated Section 74-49-51 provides that the purpose of the Kansas Police and Firemen's Retirement System is to provide an orderly means whereby police and firemen employed by participating employers and who have attained retirement age or who have become disabled may be retired from active service without

prejudice and without inflicting a hardship on the employees retired and to enable them to accumulate reserves for themselves and their dependents to provide for old age, disability, death, and termination of employment, and for the purpose of effecting economy and efficiency in the administration of governmental affairs.

Employees of the Kansas Highway Patrol and Kansas Bureau of Investigation are required to be members of the Kansas Police and Firemen's Retirement System. Board of Regents institutions and any county, city, township, or other political subdivision of the state which employs one or more employees as police officers, firefighters, emergency medical technicians, or campus police are eligible to affiliate with the system. The system currently has 10,175 members from 69 state and local agencies. For purposes of the system, police officer means an employee assigned to a police department whose principal duties are engagement in the enforcement of law and maintenance of order within the state and its political subdivisions, including sheriffs and sheriffs' deputies, and who has successfully completed the required course of instruction for law enforcement officers approved by the Kansas Law Enforcement Training Center. In addition, members are classified as either Tier I or Tier II members. Tier I members are members who were employed prior to July 1, 1989, and who did not elect Tier II coverage. Tier II members are members who were employed prior to July 1, 1989, who did elect Tier II coverage as well as all members employed on or after July 1, 1989. Finally, some current members may also be considered either Tier I or Tier II transfer or Brazelton members. Transfer members are members who are former members of a local plan who elected to participate in the Kansas Police and Firemen's Retirement System. Brazelton members are members who participated in a class action lawsuit, *Brazelton v. Kansas Public Employees Retirement System*, 227 K.443, 607 P.2d 510 (1980), whose contributions are lower and whose benefits are offset by Social Security. Corrections employees are members of the Kansas Public Employees Retirement System, but their benefits are calculated differently from those of noncorrections employees.

Contribution rates vary according to the classification of membership. Tier I and Tier II members contribute 7 percent of compensation, except in the case of a member whose employment is covered by Social Security and the member is a member of the class certified in the case of *Brazelton v. Kansas Public Employees Retirement System*, 227 K.443, 607 P.2d 510 (1980), the employee contribution is reduced by the amount of the member's contribution to Social Security. The current contribution rate for Brazelton members is .008 percent. Also, the employee contribution for Tier I and Tier II members is reduced to 2 percent after attaining 32 complete years of service.

Employer contribution rates fluctuate and are determined separately for each employer. Kansas Statutes Annotated Section 74-49-67 provides that upon the basis of an annual actuarial valuation and appraisal of the system, the Kansas Public Employees Retirement

System Board of Trustees shall certify, on or before July 15 of each year, to each participating employer an actuarially determined estimate of the rate of contribution that is required to be paid by each participating employer to pay all the liabilities that are to accrue under the system from and after the entry date as determined by the board upon recommendation of the actuary. The rate must be uniform for all participating employers and must be comprised of a rate for benefits accruing after June 30, 1993, and a rate for amortization of the additional liability for benefits provided by the system which is attributable to service rendered before July 1, 1993. Additional liability must be amortized over a period of 40 years commencing on July 1, 1993, by annual payments that increase 4 percent for each year remaining in the amortization. The employer's rate of contribution determined under this section does not include the cost of administration of the system. For fiscal year 2002, July 1, 2001, through June 30, 2002, the employer contribution rates are 9.13 percent for the Kansas Highway Patrol, 7.76 percent for the Kansas Bureau of Investigation, 6.65 percent for the Kansas Board of Regents, and various rates for local employers.

Tier I members vest after 20 years of service credit, and Tier II members vest after 15 years of service credit. The retirement benefit is calculated using a formula of final average salary times a statutory multiplier times years of service. The current statutory multiplier is 2.5 percent. Final average salary for members who were hired before July 1, 1993, is the average of the three highest years of the last five years of employment, including additional compensation such as sick leave and annual leave. Final average salary for members hired on or after July 1, 1993, is the average of the three highest of the last five years of employment with no additional compensation included.

A member is not permitted to retire for age and service and receive retirement benefits before having contributed to the retirement system for at least 12 months. Age and service retirement benefits cannot exceed 80 percent of final average salary. The normal retirement age and service requirement for a Tier I member is 55 years with 20 years of service credit, and the early retirement date for a Tier I member is 50 years with 20 years of service credit. The normal retirement date for a Tier II member is 50 years with 25 years of service credit, 55 years with 20 years of service credit, or 60 years with 15 years of service credit. The early retirement date for a Tier II member is 50 years with 20 years of service credit. The retirement date for a transfer member is age 50 with 25 years of service and reduced benefits are available at age 50 with 20 years of service.

A member may choose several retirement options, including a maximum benefit with no survivor, joint and survivor, life certain, and partial lump sum options. Disability benefits are based upon whether the disability was job-related, the classification of the member, and whether the member has children. For a Tier I member whose disability is job-related, the disability benefit is 50 percent of final average salary plus 10 percent for each eligible dependent to a maximum benefit of

75 percent of final average salary. If there is no dependent, the disability benefit is the higher of 50 percent of final average salary or 2.5 percent for each year of service credit, to a maximum of 80 percent of final average salary. For a Tier II member, the disability benefit is 50 percent of final average salary with service credit to normal retirement. However, benefits are offset \$1 for every \$2 of earnings over \$10,000.

Death benefits are based upon whether the member was active or inactive, whether the death was service or non-service-connected, and whether the member was receiving disability benefits at the time of death. If the death was job-related and there is a surviving spouse or children, the spouse receives 50 percent of final average salary until death. Each child, up to age 18 or up to age 23 if a full-time student, receives 10 percent of final average salary. The total may not exceed 75 percent of final average salary. If the death was non-job-related and there is a surviving spouse or children, the spouse receives a lump sum payment of 100 percent of final average salary plus a monthly benefit of final average salary times 2.5 percent times years of service up to a maximum of 50 percent of final average salary. If there is no surviving spouse or child, the death benefit is 100 percent of current annual salary less refundable contributions and interest to a named beneficiary.

Correctional officers are members of the Kansas Public Employees Retirement regular system, but their benefits are calculated differently. For purposes of determining benefits, correctional officer members are classified as either Group A or Group B members. Group A members are persons certified to the board of trustees by the Secretary of Corrections and who are employees of the Department of Corrections and who are in a position in a job class in the corrections officer class series, including corrections officer I, corrections officer II, corrections supervisor I, corrections supervisor II, and corrections supervisor III or in a position in the corrections counselor I, corrections counselor II, unit team supervisor, or corrections classification administrator job class, or who are promoted from one of these positions to a position in a job class of warden or deputy warden of a correctional institution, work release supervisor, training officer correctional institutions, or corrections administrator security specialist if the person was employed and had at least three consecutive years of service in any one or more positions in the job classes described above immediately preceding promotion to the position in a job class of warden, deputy warden, work release supervisor, training officer, or corrections administrator security specialist. Group B members are persons certified to the board by the Secretary of Corrections who are employed by the Department of Corrections and who are in a position for which the duties and responsibilities directly and primarily involve operation of power plant facilities within a correctional institution and involve regular contact with inmates, who are in a position for which the duties and responsibilities directly and primarily involve the operation of the correctional

industries activity of the Department of Corrections within a correctional institution and involve regular contact with inmates, who are in a position for which the duties and responsibilities directly and primarily involve supervision of food service operations within a correctional institution and involve regular contact with inmates, or who are in a position for which the duties and responsibilities directly and primarily involve supervision of maintenance operations within a correctional institution and involve regular contact with inmates.

A member is required to contribute 4 percent of gross earnings and, as with the Police and Firemen's Retirement System, the employer contribution rate is set by the board. For fiscal year 2002, the employer rate is 7.44 percent for Group A members and 6.27 percent for Group B members. The retirement benefit formula is final average salary times a statutory multiplier times years of service. The statutory multiplier is 1.75 percent for participating service and 1 percent for prior service. For members hired on or after July 1, 1993, final average salary is the average of the three highest years of employment excluding additional compensation such as sick leave and annual leave. For members hired before July 1, 1993, final average salary is the greater of either a four-year final average salary, including additional compensation, such as sick leave and annual leave, or a three-year final average salary excluding additional compensation.

A Group A member is entitled to a normal retirement benefit at age 55 or at any age when the member's age and years of service combined equal 85. An early retirement benefit is available at age 50 with 10 years of service. The early retirement reduction factor is .2 percent for each month under age 55. A member must have been employed for three years immediately before retirement to receive a benefit. A Group B member is entitled to normal retirement benefits to age 60 or at any age when the member's age and years of service combined equal 85. An early retirement benefit is available at age 55 with 10 years of service. The early retirement reduction factor is .2 percent for each month under age 60. A Group B member must have been employed for three years immediately before retirement.

Disability benefits are available to members who are totally disabled for 180 consecutive days and who no longer receive compensation from their employer. The annual benefit is equal to two-thirds of the member's annual salary less Social Security and any other employer-provided disability benefits. The minimum monthly benefit is \$100. The member is also entitled to service credit for the period of approved disability, and when determining retirement benefits, the final average salary is recalculated if the member is disabled for at least five years.

If death is not job-related, the named beneficiary is entitled to the actual contributions and interest and employer-provided life insurance equal to 150 percent of the member's salary at the time of death. If the member met the age and service requirements to retire at the time of death and the spouse is the sole named

beneficiary, the spouse may elect to receive monthly benefits under a survivor option in lieu of receiving a return of the contributions plus interest in a lump sum. If a member with 15 or more years of service dies and was not of retirement age and the spouse is the sole beneficiary, then the spouse can elect one of the survivor options at the time the member would have first been of retirement age. If the death is job-related, the spouse and children under age 18, or up to age 23 if full-time students, or dependent parents, in this order of preference, are entitled to a \$50,000 lump sum payment and a monthly amount based on 50 percent of the member's final average salary subject to reduction for benefits received under workers' compensation. This benefit is in addition to the insured death benefit and the return of contributions plus interest as for non-job-related deaths. The minimum job-related death benefit is \$100 per month.

Effective July 1, 2001, at retirement, a member may elect to receive a lump sum payment of up to 50 percent of the actuarial present value of the member's monthly retirement benefit. The monthly retirement benefit is then reduced accordingly. There are six different survivor options available at retirement, with "pop-up options" to the maximum amount allowed when a survivor predeceases the retired member. If survivor benefits are not payable, the named beneficiary is entitled to the return of any contributions and interest remaining in the member's account.

There is a 30-day waiting period following a member's effective date of retirement before the member may go back to work for a participating employer. If a retired member returns to work for the same employer for whom the member worked during the last two years of participation, the retired member may continue to receive retirement benefits and continue to work until earnings equal \$15,000 in a calendar year. At that point, the retired member must either forfeit retirement benefits for the remainder of the calendar year or stop working for the remainder of the calendar year.

Nebraska

The Nebraska Public Employees Retirement Systems administers five statewide retirement plans and one deferred compensation plan for the state of Nebraska. Three of the five statewide plans are defined benefit plans and the other two are defined contribution plans. However, only one of the plans may be characterized as a law enforcement retirement plan--the Nebraska State Patrol Retirement System.

The Nebraska State Patrol Retirement System is a defined benefit retirement plan. Every sworn officer of the Nebraska State Patrol who is employed on or after September 7, 1947, is a member of the system. Employees are required to contribute 11 percent of their gross salary which is matched by the state. The maximum retirement benefit payable is 75 percent of the retiree's final average monthly salary. Therefore, 25 years is the maximum number of years that apply toward retirement benefit calculations. If employees work more than 25 years, the extra years do not

increase retirement benefits, but if during those years the salary increases, the final average monthly salary used to calculate benefits increases.

Members are entitled to a normal retirement at age 55 with 10 or more years of service. The retirement formula is 3 percent times years of service equals percent of final average monthly salary (or $3\% \times \text{service} = \% \text{ of final average salary}$). Members are entitled to early retirement if they are at least age 50 but not yet age 55 and if they have 10 or more years of service. Benefits are calculated using the normal formula reduced by five-ninths of 1 percent for each month the member's age precedes age 55 or five-ninths of 1 percent for each month the member's years of service precedes 25 years, whichever provides the member with the greater benefit.

Members who are disabled are entitled to a disability retirement benefit. Disability is defined as the complete inability of the patrol officer, for reasons of accident or illness, to perform the duties of a patrol officer. There is no age reduction for disability benefits, and the disability retirement benefit is 50 percent of the member's regular monthly salary at the date the member became disabled if the member had 17 years of service or less. If the member had more than 17 years of service at the time of disability, the amount of the disability benefit is calculated based upon a formula of years of service times 3 percent times salary at date of disablement equals the calculated benefit amount (or $\text{service} \times 3\% \times \text{salary} = \text{benefit}$). However, by law, the calculated benefit amount may not exceed 75 percent of the final average monthly salary, which is the maximum benefit for a normal retirement.

Members are also entitled to death benefits. If death occurs before retirement, benefits are calculated as if the member had retired under disability. The surviving spouse and dependent children under age 19, in the spouse's care, are entitled to receive 100 percent of the member's benefit as calculated for disability retirement until the youngest dependent child reaches age 19. At that time the spouse's benefit is reduced to 75 percent of the member's benefit for the spouse's life or until the spouse remarries. If the spouse remarries or dies before the youngest dependent child reaches age 19, the child's benefit is reduced to 75 percent of the member's benefit until age 19. If there is no spouse living at the date of the member's death, either because of death or divorce, the member's children under age 19, if any, are entitled to receive 75 percent of the member's benefit until the youngest child attains the age of 19. If there is more than one child under age 19 at the date of the member's death, the benefit is divided equally among the children. If there are no children under age 19 living at the time of the member's death, the surviving spouse receives 75 percent of the member's benefit for life or until remarriage. If there is no spouse or children under age 19, a lump sum payment of the member's contributions and interest is paid to a designated beneficiary, or the member's estate if there is no designated beneficiary. If death occurs after retirement, the member's regular benefit continues to the member's

spouse and or children at the same percentages that apply to death before retirement. A surviving spouse is eligible to receive benefits only if married to the member at the time the member retires. If the member does not have a spouse or children under age 19, the balance is paid to the member's beneficiary or estate. Members are not covered by Social Security.

Wyoming

Wyoming has two retirement plans that apply to law enforcement officers. Certain law enforcement officers are entitled to enhanced benefits under the Wyoming Retirement Act, and law enforcement officers employed as highway patrolmen, game and fish wardens, and criminal investigators may be members of the Wyoming State Highway Patrol, Game and Fish Warden, and Criminal Investigator Retirement System. For purposes of the enhanced benefits under the Wyoming Retirement Act, law enforcement officers are members who are employed as county sheriffs, deputy county sheriffs, municipal police officers, University of Wyoming campus police officers, jailers, or dispatchers for law enforcement agencies. Law enforcement members pay an additional 3.73 percent of their salary in addition to the 5.57 percent contribution rate required by the Wyoming retirement system. The additional 3.73 percent is an employee-only contribution not matched by the employer and is refundable along with regular contributions and interest if the member chooses to withdraw from the retirement system at termination. The employer contribution is 5.68 percent of salary. In addition, the state is required to pick up and pay the employees' contributions, and political subdivisions may pay their employees' contributions.

Normal retirement benefits for a law enforcement officer are payable when the officer has at least four years of service credit as a law enforcement officer and is at least 60 years of age, has at least 25 years of service credit as a law enforcement officer and is at least 50 years of age, or is at least 55 years of age and has a combined total years of service credit and years of age that equals at least 75. Early retirement benefits are payable to a law enforcement officer who has at least four but less than 25 years of service credit and is at least age 50 but not yet 60 years of age or is less than 50 years of age and has at least 25 years of service credit as a law enforcement officer.

The normal retirement benefit for a member who first becomes covered under the Wyoming Retirement Act after June 30, 1981, is equal to 2.125 percent of the highest average salary multiplied by the member's years of service credit for the first 15 years of service credit and 2.25 percent of the highest average salary multiplied by the member's years of service credit for any years of service credit exceeding 15 years. The retirement benefit for a member with service after March 31, 1953, but before July 1, 1981, is equal to a monthly benefit amount based on the actuarial equivalent of double the member's account with any applicable increase or 2.125 percent of the member's highest average salary

multiplied by the member's years of service credit for the first 15 years of service credit and 2.25 percent of the member's highest average salary multiplied by the member's years of service credit for years of service credit exceeding 15 years.

The Wyoming Retirement Act also provides for retirement benefit adjustments. Effective July 1, 2001, and on each July 1 thereafter, any retirement benefit, survivor benefit, or disability benefit received by eligible individuals is to be adjusted. Before each July 1, the Retirement Board is to determine the percentage increase in the cost of living for the preceding calendar year. The percentage increase in the cost of living for a calendar year is equal to the annual percentage increase in the cost of living as of the immediately following January 1 as shown by the Wyoming cost-of-living index as determined by the Division of Economic Analysis of the Department of Administration and Information. The benefits existing on each July 1 for each eligible individual must be increased by the lesser of the percentage increase in the cost of living as determined by the board or 3 percent. The amount of any percentage increase in the cost of living that exceeds 3 percent must be accumulated and added to the percentage increases in the cost of living for future years. An individual who has been receiving applicable benefits, for at least two years, either alone or in combination with a member, if the individual is a survivor, is eligible for these benefits. An increase in benefits under this provision is effective only upon a determination by the system's actuary that the increase is actuarially sound. The actuary must annually report its determination pursuant to this provision to the Governor and the joint appropriations interim committee, and the total benefit adjustment under this provision may not exceed 3 percent in any one year.

If a member dies before retirement under the system, the member's account plus an additional amount equal to the member's account must be paid to the member's designated beneficiaries or in the absence of designated beneficiaries to the member's estate. If the member is vested, instead of a lump sum payment, a beneficiary may elect to receive the actuarial equivalent of the lump sum of any benefit for life which is available to a retired member. A beneficiary who is the surviving spouse of the deceased member and who elects to receive the actuarial equivalent of the lump sum as a life benefit may, within 18 months of the death of the member, elect to receive the lump sum death benefit otherwise provided plus interest accumulated on that account less any payments received by the surviving spouse. If a member receiving benefits or the member's beneficiary receiving retirement benefits dies before the total amount of benefits paid to either the member or the member's beneficiary or both equals the amount of the member's account at retirement, then the excess, if any, must be paid to any other named beneficiary, if any, or to the member's estate.

A member in service who has 10 or more years of service credit during which contributions have been paid because of illness or injury outside of or in the scope of

employment or any law enforcement officer in service for whom contributions have been paid because of injury in the scope of employment may retire on account of a total or partial disability in accordance with rules adopted by the board. Upon retirement for a total disability, a member is entitled to receive a monthly disability retirement benefit for the period of the member's disability equal to 100 percent of the member's service retirement benefit as if the member were eligible for normal retirement benefits. Upon retirement for a partial disability, a member is entitled to receive a monthly disability retirement benefit for the period of disability equal to 50 percent of the normal retirement benefit payable to the member as if the member were eligible for normal retirement benefits. Disability benefits are payable for the life of the member or until the member is no longer disabled.

Persons employed by the Wyoming State Highway Patrol Division as sworn law enforcement officers, persons commissioned as full-time law enforcement officers of the Wyoming State Game and Fish Department, criminal investigators, and persons designated and appointed as capitol police are entitled to participate in the Wyoming State Highway Patrol, Game and Fish Warden, and Criminal Investigator Retirement System. For purposes of this plan, criminal investigator means a full-time special agent employed by the Division of Criminal Investigation of the Attorney General's office who is a sworn peace officer. Employees covered by this plan contribute 11.02 percent of salary. However, contributions are picked up by the member's employer. Employers are required to contribute 11.33 percent of all salaries paid to their employees.

Employees retiring with 25 or more years of service may elect to retire and receive a benefit upon attaining age 50. Employees in service who have attained age 65 must be retired not later than the last day of the calendar month in which their 65th birthday occurs.

The service retirement allowance payable to an employee at age 50 is equal to 2.5 percent of the employee's highest average salary for each year of credited service in the program, provided the retirement allowance does not exceed 75 percent of the highest average salary. Effective July 1, 2001, and on each July 1 thereafter, any service retirement allowance, survivor benefit, or disability benefit received by eligible individuals under the Wyoming State Highway Patrol, Game and Fish Warden, and Criminal Investigator Retirement System must be adjusted. Before each July 1, the board is required to determine the percentage increase in the cost of living for the preceding calendar year. The percentage increase in the cost of living for a calendar year is equal to the annual percentage increase in the cost of living as of the immediately following January 1 as shown by the Wyoming cost-of-living index as determined by the Division of Economic Analysis of the Department of Administration and Information. The benefits existing on each July 1 for each eligible individual must be increased by the lesser of the percentage increase in the cost of living as determined by the board or by 2.25 percent. The amount of any percentage

increase in the cost of living that exceeds 2.25 percent must be accumulated and added to the percentage increases in the cost of living for future years. Individuals who have been receiving applicable benefits for at least two years, either alone or in combination with an eligible employee if the individual is a survivor, are eligible for the increased benefit. An increase in benefits under this provision is effective only upon a determination by the actuary of the Wyoming retirement system that the increase is actuarially sound. The actuary is required to report its annual determination under this provision to the Governor and joint appropriations interim committee. The total benefit adjustment under this provision may not exceed 2.25 percent in any one year.

A member who suffers a partial or total disability resulting from an individual and specific act, the type of which would normally occur only while employed as an employee, is eligible for a duty-connected disability allowance. If the specific act involves a traumatic event that directly causes an immediate cardiovascular condition resulting in partial or total disability, the employee is eligible for a partial or total duty-connected disability allowance. An employee with 10 years of credited service who suffers a partial or total disability and who is not eligible for a duty-connected disability allowance is eligible for an ordinary partial or total disability allowance. The determination of disability and its cause must be made by the board after receiving the recommendation of its medical committee. A disability allowance is 50 percent of the highest average salary for duty-connected or ordinary total disability, 35 percent of the highest average salary for duty-connected partial disability, or 25 percent of the highest average salary for ordinary partial disability.

If a member of the State Highway Patrol, Game and Fish Warden, and Criminal Investigator Retirement System dies as a result of an activity related to official duty as an employee prior to retirement, a monthly death benefit equal to 50 percent of the member's final actual salary at the time of death is paid to the surviving spouse. In addition, an amount equal to 5 percent of the final actual salary is paid as a benefit for each unmarried child under age 18, provided the total death benefit paid to the surviving spouse and children does not exceed the employee's final actual salary.

If a member dies before retirement and the member's death is not related to official duty as an employee, a monthly nonduty death benefit is paid to the surviving spouse, equal to 2 percent of the member's final actual salary at the time of death for each year of credited service. The maximum nonduty death benefit payable to a spouse may not exceed 50 percent of the member's final actual salary. In addition, an amount equal to 5 percent of the final actual salary must be paid as a benefit for each unmarried child under age 18. The total nonduty death benefit paid to the surviving spouse and children may not exceed 60 percent of the employee's final actual salary.

If a retired member of the retirement program dies, the spouse of the deceased member is entitled to receive a benefit equal to 50 percent of the retirement

allowance. In determining the benefit to be paid to the spouse, no reduction due to Social Security may be taken into account. In addition, an amount equal to 5 percent of the final actual salary is paid as a benefit for each unmarried child under the age of 18 years. The total benefit paid to the surviving spouse and children on the death of the retired member in accordance with this provision may not exceed 60 percent of the employee's final actual salary.

Testimony and Committee Activities

The committee surveyed state agencies with law enforcement and corrections responsibilities to determine the number of employees who may be eligible to participate in a separate law enforcement and correctional officer retirement program. The committee learned that 37 employees of the Attorney General, three employees of the Highway Patrol, 71 employees of the Field Services Division of the Department of Corrections and Rehabilitation, 257 employees of the Prisons Division of the Department of Corrections and Rehabilitation, 12 employees of Roughrider Industries, and 31 employees of the Game and Fish Department--a total of 411 state employees--would be eligible to participate in a separate law enforcement and correctional officer retirement program.

The committee surveyed counties and cities to determine whether they participate in Social Security, whether they have an existing retirement plan separate from the Public Employees Retirement System, whether they would consider merging their plan with a new state law enforcement and correctional officer retirement plan, and the number of peace and correctional officers employed by that political subdivision. The committee learned that most counties participate in the Social Security system but not nearly as many cities participate, that most counties do not have an existing retirement plan separate from the Public Employees Retirement System, that whether a political subdivision would merge its retirement plan with a new state plan depends upon the cost of the plan and the benefits available under that plan, and that there are approximately 755.25 peace and correctional officers employed by political subdivisions who may be eligible to participate in a law enforcement and correctional officer retirement plan. However, the survey results were incomplete.

The Attorney General testified that the state must take steps to retain well-qualified and experienced peace officers in North Dakota. North Dakota law enforcement officials are well-respected in the law enforcement community, and out-of-state law enforcement agencies are actively recruiting North Dakota peace officers, often using better benefit packages to do so. The Attorney General testified that this actually increases law enforcement costs to North Dakota residents because of the training costs that are spent on officers who later leave the state. The Attorney General testified that providing additional salaries for law enforcement officers may be difficult, but that one solution to the recruitment and retention problem would be to review enhanced

retirement benefits for law enforcement personnel in North Dakota.

The warden and director of the Prisons Division of the Department of Corrections and Rehabilitation testified that a retirement system that allows employees to retire after 20 years of service would increase public safety and aid the public safety agencies in the recruitment and retention of employees. Even though corrections officers must stay in good physical condition, a 60-year-old officer is no physical match for a young inmate. The committee received testimony that an earlier retirement age would permit older staff to retire once their physical skills diminish and would allow correctional and law enforcement agencies to replenish their workforce and keep it physically strong. The warden and director testified that the Department of Corrections and Rehabilitation has had 11 correctional officers retire during the past five years, with their average age at retirement being 62.9 years. Most of these employees remained in the workforce in order to attain the Rule of 85 and be able to retire with full retirement benefits. The average age of the inmate population is 29 years. The warden and director testified that the Prisons Division is having a difficult time attracting and retaining correctional officers at state facilities and a better retirement package would help in recruiting and retaining officers. Testimony indicated that an enhanced retirement program would also allow the Prisons Division to compete with other prison systems to keep their younger trained staff within the state system as it is losing employees to the Federal Bureau of Prisons and other state prison systems. Also, testimony indicated that older than average workers bring, on average, more workers' compensation claims for employment at the Prisons Division.

Representatives of the Game and Fish Department testified that game wardens perform physically demanding work, much of it outdoors and in inclement weather. Two game wardens have suffered fatal heart attacks while on the job in the last 10 years. Testimony indicated that a separate retirement system with a lower normal retirement age for law enforcement officers would enhance the morale and efficiency of the Game and Fish Department.

A representative of the North Dakota Sheriffs and Deputies Association testified that it is becoming increasingly difficult to attract quality applicants and to retain these individuals once they are employed in North Dakota, and a representative of the North Dakota Chiefs of Police Association testified that allowing law enforcement officers to retire earlier would result in lower workers' compensation rates because of fewer injuries on the job and also lessen a political subdivision's liability because older law enforcement officers are more likely to cause liability problems for political subdivisions.

The committee received testimony from the president of the North Dakota County Commissioners Association that a law enforcement and correctional officer retirement program may result in increased costs to counties and that the state should not mandate participation by

political subdivisions without providing the financial resources to do so.

The committee reviewed the existing Public Employees Retirement System retirement plans to determine whether peace officers and correctional officers could be included in an existing plan. The committee determined the main system is not appropriate because the normal retirement age is 65 or the Rule of 85. The committee determined that the Highway Patrolmen's retirement system is not appropriate because members of the Highway Patrolmen's retirement system do not participate in the federal Social Security system, and thus their benefits as well as contributions are much higher than for the main system. The committee noted the normal retirement age for the National Guard retirement system is 55 and that these members participate in the federal Social Security system, the same as state law enforcement and correctional officers who would be eligible for a separate plan.

The committee considered a bill draft relating to participation by peace officers and correctional officers in the defined benefit retirement plan and the defined contribution retirement plan. The bill draft provided that peace officers and correctional officers participating in the defined benefit retirement plan or the defined contribution retirement plan who have completed at least three consecutive years of employment as a peace officer or correctional officer immediately preceding retirement would be able to retire at age 55. Under the bill draft, peace officers and correctional officers would be included in the National Guard retirement plan because members of the National Guard retirement plan have a normal retirement age of 55 and they participate in the federal Social Security system. The multiplier would be the same as that for other members of the defined benefit retirement plan, 2.0 percent. Participants would be required to contribute 4 percent of monthly salary and employers would be required to contribute an amount determined by the Retirement Board to be actuarially required to support the level of benefits provided. Employers would be authorized to "pick up" and pay the employee's assessment. For purposes of the bill draft, peace officer is defined as a participating member who is a peace officer as defined in NDCC Section 12-63-01 and is employed as a peace officer. Section 12-63-01(4) defines a peace officer as a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations of violations of the law. The bill draft defined a correctional officer as a participating member who is certified by the Department of Corrections and Rehabilitation or the Peace Officer Standards and Training Board as a correctional officer and is employed by the Department of Corrections and Rehabilitation or a political subdivision. The bill draft provided that political subdivisions, on behalf of their peace officers and correctional officers separately from their other employees, may enter an agreement with the Retirement Board for the purpose of extending the benefits of the Public Employees Retirement System to those employees. In addition, political subdivisions having existing police pension plans may

merge those plans into the Public Employees Retirement System under rules adopted by and in a manner determined by the Retirement Board. Eligible employees could join the defined contribution retirement plan with the same contributions that apply to the defined benefit retirement plan.

The consulting actuary for the Public Employees Retirement System determined the value of the current benefits of the 411 members of the Public Employees Retirement System who would become peace officer or correctional officer members of the National Guard retirement system. The consulting actuary then determined the normal cost and accrued liability, as of July 1, 2001, for these members under both plans. The following table sets forth these calculations:

	Current (Main)		Proposed (National Guard)	
	Amount	Percentage of Payroll	Amount	Percentage of Payroll
Total normal cost	\$969,727	8.33%	\$1,158,232	9.94%
Employee contribution	\$465,916	4.00%	\$465,916	4.00%
Employer normal cost	\$503,811	4.33%	\$692,316	5.94%
Actuarial accrued liability	\$15,915,203	-	\$18,267,044	

The table shows there is an increase in both the normal cost and accrued liability for the participants affected. This is due to the earlier retirement eligibility provisions of the National Guard retirement plan.

The consulting actuary reported that assuming all eligible members participate in the National Guard retirement plan and that all past service is credited under the plan, an asset transfer representing the value of service accrued under the main system would occur. The consulting actuary reported there are two methods commonly used when determining the value of this asset transfer. The first considers a transfer equal to the actuarial accrued liability of the group transferring to the National Guard retirement plan. Of the 411 participants identified by the Public Employees Retirement System staff, the consulting actuary found 381 members with benefits accrued under the main system as of July 1, 2001. Under the first asset transfer calculation method, the asset transfer equals the actuarial accrued liability for the eligible group, that is \$15,915,203 as of July 1, 2001. This amount would need to be adjusted for the actual transfer date as well as any changes in the eligible group. Under the alternative method an amount equal to the accrued liability adjusted by the current funded ratio would be transferred. As of July 1, 2001, the plan had a funded ratio of 110.6 percent, resulting in a transfer amount of \$17,602,215. The consulting actuary reported that it is important to note, due primarily from investment performance, that the funded ratio of the system at the actual date of the transfer may be materially different. Under the second method the consulting actuary said it would recommend that either the transfer coincide with the next actuarial valuation, when a full remeasurement

of the funded ratio would occur, or that the latest valuation liabilities be rolled forward to the transfer date and used with the latest asset information to develop an interim estimate of the funded position as of the transfer date.

The consulting actuary reported that under either of the asset transfer methods, the transfer is less than the value of the benefits accrued under the National Guard retirement plan and results in an unfunded actuarial accrued liability. The following table shows the contributions required of employers of the transferring participants under both asset transfer calculation methods and varying amortization periods. These rates are determined without reflecting the current surplus position of the National Guard retirement plan and assuming the administrative expense allowance of the main system.

	Asset Transfer Method 1		Asset Transfer Method 2	
	Amount	Percentage of Payroll	Amount	Percentage of Payroll
Total normal cost	\$1,158,232	9.94%	\$1,158,232	9.94%
Employee contribution	\$465,916	4.00%	\$465,916	4.00%
Employer normal cost	\$692,316	5.94%	\$692,316	5.94%
Actuarial accrued liability	\$18,267,044	-	\$18,267,044	-
Asset transfer	\$15,915,203		\$17,602,215	
Unfunded actuarial accrued liability	\$2,351,841		\$664,829	
10-year amortization of the unfunded actuarial accrued liability	\$282,203	2.42%	\$79,774	0.68%
20-year amortization of the unfunded actuarial accrued liability	\$164,136	1.41%	\$46,399	0.40%
30-year amortization of the unfunded actuarial accrued liability	\$126,166	1.08%	\$35,665	0.31%
Administrative expense allowance	\$19,801	0.17%	\$19,801	0.17%
Total required contribution with 10-year amortization (3 + 7 + 10)	\$994,320	8.54%	\$791,891	6.80%
Total required contribution with 20-year amortization (3 + 8 + 10)	\$876,253	7.52%	\$758,516	6.51%
Total required contribution with 30-year amortization (3 + 9 + 10)	\$838,283	7.20%	\$747,782	6.42%

This table demonstrates that the Public Employees Retirement System Retirement Board mandated employer contribution rate of 8.33 percent is sufficient to meet the funding requirements under all variations except that using the first asset transfer calculation method and the 10-year amortization of the resulting unfunded liability. These results reflect an approach that would differentiate future employer costs between the current membership and the transferring group. This approach results in additional administrative work, data, and actuarial expense due to developing two specific employer contribution requirements, one for the current participants, and one for the transferring group.

The consulting actuary reported that if the transfer occurs without regard to the difference in normal costs and accrued liabilities of the current and transferring groups, the resulting employer-required contribution rate determined using the current funding policy is 7.32 percent of payroll under the first asset transfer calculation method and 6.35 percent of payroll under the second asset calculation method. These results are comparable to item 12 in the previous table as all reflect a 20-year amortization of unfunded liabilities. The consulting actuary reported this approach would prospectively treat all employers the same as it is similar to a weighted average cost of current and transferring participants. Regardless of the asset transfer calculation method, a funding margin would exist as of July 1, 2001. The consulting actuary reported that a criticism of this approach is that the surplus position of the pretransfer plan is subsidizing some of the cost of the transfer. However, payroll of the current plan members is only 4.0 percent of the total payroll of both groups and the consulting actuary expects this percentage to decrease in the future. On a prospective basis there would be no material impact to the main system due to the proposal as reflected by the match of the normal cost rates of the transferring group to the main system as a whole. Depending upon the asset transfer calculation method utilized and the funded status of the main system, a small gain or loss may result at the transfer date. The magnitude of this gain or loss would likely be immaterial to the system. Finally, the consulting actuary reported the earlier retirement eligibility of the transferring participants also results in increased retiree health liabilities. The consulting actuary did not determine the impact of this increase in the scope of its review, however, because of the relatively small number of participants affected; the consulting actuary estimated the impact to the overall program to be minimal.

The executive director of the Public Employees Retirement System testified that one issue that should be addressed by the committee is whether the employer contribution rate for the law enforcement and correctional officer retirement program should be blended with the National Guard employer contribution rate or whether a separate rate should be established. If a separate rate is established, two additional issues are whether the assets should be transferred based upon the accrued liability for the member or whether the assets should be

transferred based upon the accrued liability for the member plus any gains. One reason not to blend the contribution rate with the National Guard rate is because National Guard employer contributions are paid by the federal government, and if the contribution rates were blended, the issue of whether the federal government is subsidizing the state employees in the system would be raised. If the National Guard and law enforcement rates are blended and only accrued liability is transferred, the employer contribution rate would be 7.32 percent. If accrued liability plus gains based upon last year's actuarial report are transferred, the employer contribution rate would be 6.35 percent as compared to 4.12 percent for the main system under current law. If a separate rate is established and accrued liability only is transferred, the contribution rate would be 8.54 percent using a 10-year amortization period, 7.52 percent using a 20-year amortization period, and 7.20 percent using a 30-year amortization period. If accrued liability and gain is transferred, the contribution rate would be 6.80 percent using a 10-year amortization period, 6.51 percent using a 20-year amortization period, and 6.42 percent using a 30-year amortization period. The cost increase for the state would be \$1,066,000 if the employer contribution rate is 8.33 percent, \$861,100 if the employer contribution rate is 7.52 percent, \$810,400 if the employer contribution rate is 7.32 percent, \$678,700 if the employer contribution rate is 6.8 percent, and \$582,500 if the employer contribution rate is 6.42 percent. Representatives of the Public Employees Retirement System testified that it will probably employ a blended employer contribution rate and use the asset transfer method. The committee agreed that the asset transfer methodology should be determined by the Public Employees Retirement System Board.

A representative of the North Dakota Sheriffs and Deputies Association testified the bill draft contained a normal retirement date of age 55 with at least three consecutive years of employment as a peace officer or correctional officer immediately preceding retirement. Many law enforcement and correctional officers are eligible to retire under the Rule of 85 under the current retirement system before they reach age 65. Thus, if this system becomes law, members may actually have to work longer than they would under current law. The representative suggested the committee include a Rule of 85 and a normal retirement date of age 50 with 20 years of service in the bill draft.

The director of the Bureau of Criminal Investigation testified that several Bureau of Criminal Investigation employees will reach the Rule of 85 before age 55. Thus, if this bill draft is enacted with a normal retirement age of age 55, these employees will have to work longer than they would have under the existing system to receive a normal retirement benefit. The director proposed the committee include a Rule of 85 along with the normal retirement age of 55 to solve this problem.

The consulting actuary reported that using asset transfer method 1 and a 20-year amortization schedule the Rule of 85 will cost an additional \$91,473 or .79% of compensation, a normal retirement date of age 50 with

20 years of service will cost an additional \$230,923 or 1.99 percent of compensation, a multiplier of 2.20 percent will cost an additional \$336,111 or 2.89 percent of compensation, a multiplier of 2.50 percent will cost an additional \$774,933 or 6.66 percent of compensation. The actuarial results for the Rule of 85 are summarized in the following table:

	Asset Transfer Method 1		Rule of 85	
	Amount	Percentage of Payroll	Amount	Percentage of Payroll
Total normal cost	\$1,158,232	9.94%	\$1,195,494	10.26%
Employee contributions	\$465,916	4.00%	\$465,916	4.00%
Employer normal cost	\$692,316	5.94%	\$729,578	6.26%
Actuarial accrued liability	\$18,267,044	-	\$19,043,824	-
Asset transfer	\$15,915,203		\$15,915,203	
Unfunded actuarial accrued liability	\$2,351,841		\$3,128,621	
20-year amortization of the unfunded actuarial accrued liability	\$164,136	1.41%	\$218,347	1.87%
Administrative expense allowance	\$19,801	0.17%	\$19,801	0.17%
Total required contribution with 20-year amortization (3 + 7 + 8)	\$876,253	7.52%	\$967,726	8.31%
Increase in required contribution	-	-	\$91,473	0.79%

Representatives of the City of Minot testified that the City of Minot offers a defined benefit retirement program for all city employees which provides a fair and equal retirement benefit for all employees regardless of profession. The representatives testified that to single out law enforcement employees and to provide a separate and different retirement benefit would create an inequity among the city's employees. They testified that another concern is funding such a program while still providing for current retired personnel.

A representative of the North Dakota League of Cities testified that if one group of employees receives an improved benefit, other employee groups will also want it. The representative noted that improved benefits result in increased costs, and cities should not be given an unfunded mandate. Finally, the representative testified that city officials are in the best position to determine the type of employee benefits that can be provided within a city's budget limitations.

Recommendation

The committee recommends Senate Bill No. 2033 to include peace officers and correctional officers in the National Guard retirement plan. Peace officers and correctional officers would be assessed 4 percent of

their monthly pay and employers would be required to contribute an amount determined by the Retirement Board to be actuarially required to support the level of benefits specified by law. The multiplier is the same as that for other members of the defined benefit retirement plan, but the normal retirement date for a peace officer or correctional officer is the first day of the month next following the month in which the peace officer or correctional officer attains the age of 55 years and has completed at least three consecutive years of employment as a peace officer or correctional officer immediately preceding retirement or when the peace officer or correctional officer has a combined total of years of service credit and years of age equal to 85 and has not received a retirement benefit. Political subdivisions, on behalf of their peace officers and correctional officers separately from their other employees, may enter agreements with the Retirement Board for the purpose of

extending the benefits of the National Guard retirement system to those employees. Political subdivisions having an existing police pension plan may merge that plan into the Public Employees Retirement System under rules adopted by and in a manner determined by the Retirement Board. Under the bill, members eligible to transfer to the National Guard retirement system may elect to transfer to the defined contribution retirement system. The bill appropriates \$126,096 to the Attorney General, \$10,272 to the Highway Patrol, \$817,632 to the Department of Corrections and Rehabilitation, and \$107,136 to the Game and Fish Department to defray the cost of participation by peace officers and correctional officers in the defined benefit retirement plan and the defined contribution retirement plan for the 2003-05 biennium. Of these funds, \$878,526 are general fund money and \$182,610 are other fund money.

FAMILY LAW COMMITTEE

The Family Law Committee was assigned three studies. Section 17 of House Bill No. 1012 directed a study of the feasibility and desirability of state administration of child support, including the fiscal effect on counties and the state. Senate Resolution No. 4014 directed a study of the adoption laws of this state and other states. Senate Concurrent Resolution No. 4019 directed a study of the medical and financial privacy laws in this state, including the effectiveness of medical and financial privacy laws in other states, the interaction of federal and state medical and financial privacy laws, and whether current medical and financial privacy protections meet the reasonable expectations of the citizens of North Dakota.

Committee members were Representatives John Mahoney (Chairman), Lois Delmore, Mary Ekstrom, Roxanne Jensen, Jim Kasper, Lawrence R. Klemin, Carol A. Niemeier, Dan Ruby, Sally M. Sandvig, and Dwight Wrangham and Senators Linda Christenson, Dick Dever, Robert S. Erbele, Michael A. Every, Russell T. Thane, and Darlene Watne.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2002. The Council accepted the report for submission to the 58th Legislative Assembly.

ADMINISTRATION OF CHILD SUPPORT STUDY

During the 1999-2000 interim the State Auditor performed a performance audit on aspects of the North Dakota child support enforcement program of the Department of Human Services. The performance audit report dated September 14, 2000, contained results of the audit and the results of a review performed by TMR-MAXIMUS, an independent consulting firm that had since changed its name to MAXIMUS. The portion of the report addressing "Statizing and Placement of the Agency" included an analysis of the child support enforcement program's state-supervised and county-administered organizational structure, including an analysis of staffing levels, staff functions, and duties of the Child Support Enforcement Division and the regional child support enforcement units. The consulting firm recommended that the state's child support enforcement program should be state-administered instead of county-administered. The consulting firm reported that there is "poor communication between the state child support office and the regions." In addition the recommendations in the report include considering whether there is a need to realign and consolidate the eight regional offices. In the report the purpose for considering consolidation or realignment was to "reach a level of peak efficiency that does not overly-compromise geographic proximity to customers or courts."

Background

2001 Legislation

House Bill No. 1012, the appropriations bill for the Department of Human Services, in part, changed the reimbursement rate to counties for an affected county's expenses for locally administered economic assistance programs from 100 percent to a percentage based on the level of legislative appropriations. This portion of the bill conflicted with House Bill No. 1015, which was enacted by the Legislative Assembly after House Bill No. 1012; therefore, the provisions of House Bill No. 1015 went into effect instead of the provisions of House Bill No. 1012.

House Bill No. 1015 changed the reimbursement rate to counties for an affected county's expenses for locally administered economic assistance programs from 100 percent to 90 percent.

Senate Bill No. 2160 exempted the child support enforcement program from fees charged by the registers of deeds and the Secretary of State for searching records, fees for filing documents in the central indexing system, and fees for copying for cases involving the establishment of paternity or for the establishment, modification, or enforcement of child support.

Previous Legislation

In 1999 House Bill No. 1121 designated the clerk of court as the public official responsible for sending notices of child support arrearages and for the administration of income-withholding for all cases other than Title IV-D cases until January 16, 2001, at which time the Department of Human Services took over these duties.

In 1999 Senate Bill No. 2012 required the Department of Human Services to reimburse county social service boards for locally administered economic assistance programs in counties in which more than 20 percent of the caseload for these programs consisted of people who reside on a federally recognized Indian reservation or property tax-exempt tribal trust lands. The bill required a county to reimburse the state for the county's share of one-fourth of the amount expended in the state in excess of any federal payments on behalf of children in foster care or subsidized adoption.

In 1997 House Bill No. 1041, known as the SWAP legislation, required counties to assume the financial responsibility for the costs of administering certain economic assistance programs and required the state to assume complete financial responsibility for the grant costs of medical assistance and basic care and contribute additional support of administrative costs for counties with Indian land.

In 1997 House Bill No. 1226 provided for implementation of federal welfare reform, authorized the Department of Human Services to administer the temporary assistance for needy families (TANF) program, and provided that the county social service boards administer that program. The bill provided for the establishment of a statewide automated data processing system that

contains records with respect to each child support case in which services are being provided by the state agency or a child support agency. The bill also addressed state and county responsibilities for financing the costs of administering the TANF program, child care assistance, and employment and training.

Previous Studies

During the 1999-2000 interim the Legislative Council's interim Judiciary Committee studied the family law process in the state with a focus on the review of existing statutes, the coordination of procedures, and the further implementation of alternative dispute resolution methods. The committee performed this study and did not recommend any bills related to the issue of administration of child support.

During the 1999-2000 interim the Legislative Council's interim Legislative Audit and Fiscal Review Committee received from the State Auditor a child support enforcement performance audit. The State Auditor, in concert with a private consultant, analyzed the child support enforcement program's state-supervised and county-administered organizational structure, including an analysis of staffing levels, staff functions, and duties of the Child Support Enforcement Division and the regional units. The audit included an analysis of the child support enforcement program's state-supervised and county-administered organizational structure, including an analysis of staffing levels, staff functions, and duties of the Child Support Enforcement Division and the regional units. The consulting firm recommended that the state's child support enforcement program should be state-administered instead of county-administered.

During the 1997-98 interim the Legislative Council's interim Child Support Committee studied the provision of child support services and child care licensing in the state. The committee did not recommend any bills related to the issue of administration of child support.

During the 1995-96 interim the Legislative Council's interim Budget Committee on Human Services studied the responsibilities of county social service agencies, regional human service centers, and the Department of Human Services. The committee cooperated with the Joint Social Service Committee, which was composed of representatives of the North Dakota Association of County Social Services Board Members Association, the Department of Human Services, and the North Dakota Association of Counties, in studying statutes relative to county-based social services, options for the provision of child support enforcement services, the current and ideal structure for early childhood licensing, and the overall structure and funding of children and family services. The committee recommended House Bill No. 1041, which is discussed previously in this report.

During the 1995-96 interim the Legislative Council's interim Legislative Audit and Fiscal Review Committee received from the State Auditor a child support enforcement program performance audit report. The audit reviewed the efficiency and effectiveness of the state's system of establishing and enforcing child support

orders, the potential for reducing costs through program fees and interest on arrears, and the adequacy of policies and procedures surrounding the collection of overpayments to custodial parents. This audit was conducted as part of a joint performance audit initiated by the National State Auditors Association.

Testimony

The committee received extensive testimony from a broad range of parties interested in the administration of child support study, including representatives of the State Auditor, the regional child support enforcement units, MAXIMUS, the Department of Human Services, the county social services boards, the North Dakota Association of Counties, and the Attorney General.

The study began with a review of the 2000 child support enforcement performance audit as it pertained to administration of the child support enforcement program, continued with the receipt of testimony regarding the pros and cons of different administrative structures, and concluded with the receipt of testimony regarding who should most appropriately fund the child support enforcement program and regarding social service funding issues related to regions with Indian reservations and Indian trust land.

State Auditor

A representative of the State Auditor's office presented the portion of the 2000 child support enforcement performance audit that dealt with administration of the child support enforcement system. The audit was the result of a risk assessment of Department of Human Services programs, under which the child support enforcement program was determined to be of high risk. The audit included a survey of the child support enforcement programs of other states. Testimony indicated the national trend is state administration of child support enforcement programs.

Information gathered through the audit indicated there was poor communication between the state and the regional child support enforcement units and that changing to a state-administered program may improve this communication; the child support enforcement services offered across the state were not uniform and not consistent, and this resulted in extra time and money being spent; and there were strained communications, administrative redundancies, contradictory practices, and imperfect allocation of resources under the county-administered system.

The testimony indicated possible benefits of changing to a state-administered child support enforcement system may include:

- Equalization of caseloads between the state's eight child support enforcement regions;
- Consistent employee salaries between the state's eight child support enforcement regions;
- Improved customer service;
- Faster processing of child support payments;
- Increased child support collections; and

- The possibility that over time there may be an opportunity to decrease the number of full-time child support enforcement employees.

Regional Child Support Enforcement Units

The committee received testimony regarding the structure and duties of the regional child support enforcement units. Each of the eight regional child support enforcement units has its own cooperative agreement with the state's child support enforcement agency and with each county's social services board, state's attorney, clerk of court, and sheriff's department. In the Minot, Bismarck, and Fargo units, the county social service boards delegated the duty to supervise the respective regional units to the state's attorney's office in the host county. In the other five regional units supervision is provided by the host county's social services department or a representative board.

A representative of the regional child support enforcement unit administrators testified that each unit operates somewhat differently, depending on the needs of the region. The committee received testimony that some of the similarities between units are that each regional unit operates out of an office in the host county's courthouse or a private office building and that each unit has an administrator who is responsible for:

- Managing the unit and supervising the staff;
- Primarily ensuring compliance with program policies and procedures;
- Supervising and coordinating the work of all staff in the unit and in the several counties in which the unit operates;
- Handling all personnel issues and interviews;
- Meeting with custodial and noncustodial parents, attorneys, county officials, and legislators;
- Preparing for and attending monthly administrator meetings;
- Participating in the legislative process;
- Preparing state regional budgets;
- Conducting regular staff meetings;
- Participating in development and implementation of the state's strategic plan; and
- Promoting public relations.

A representative of the regional child support enforcement unit administrators acknowledged that the performance audit report was one of the catalysts for the discussion of state administration of the system; however, since the audit was performed during the conversion to the new automated system, the audit is not a fair representation of how the eight units currently operate. If a performance audit were conducted today, the testimony indicated the auditors would see a much different picture. Regional office staff are proficient in the use of the automated system, the regional offices have implemented more administrative procedures, and the regions have made great strides in the efficient operation of the units. Additionally, the committee received testimony that the unit administrators were concerned that during the audit, four of the eight units were not included and that the audit findings and

conclusions were not made available to the units in order to comment on the draft.

The committee received testimony that administrators had concerns that if the child support enforcement program was state-administered:

- Recipients would not be provided the services they need on the local level;
- The state would not have the staff and resources necessary to adequately administer the program; and
- Administrative decisionmaking would not necessarily include input from the local regions.

The committee received testimony that although there may be some efficiencies that would be recognized by changing to a state-administered child support enforcement program, there are some benefits to be gained from the current structure due to its local proximity. Additionally, testimony was received that most of the improved efficiencies that could be gained by going to a state-administered program would be able to be recognized under the county-administered program if sufficient funds were made available to the counties.

Audit Consultant

The committee received testimony from a representative of MAXIMUS, the consulting firm that assisted in the 2000 child support enforcement performance audit that dealt with administration of the child support enforcement system. The committee received information regarding North Dakota's performance in key child support enforcement categories compared to the nation and compared to South Dakota, which is an example of a state that has a state-administered child support enforcement program. The data indicated that North Dakota met or exceeded the national performance; however, South Dakota significantly exceeded North Dakota on almost all of these performance figures. The committee received the following information:

- In fiscal year 2000, 154 full-time employees were attributable to the North Dakota child support enforcement program.
- The central state child support enforcement office has 32 positions to perform all of the federally mandated functions as well as some state-level enforcement activities.
- The counties in each of the eight regional child support enforcement units pool their resources to pay for the regional child support enforcement staff. The caseload per full-time employee in the regional units varies substantially as do the results under the performance indicators. Performance of the units with lower caseload-to-staff ratios is better than that of units with higher ratios.
- Under the 1997 SWAP legislation, the counties continue to provide child support services under state direction, in a manner organized by the counties.
- The regional pool of local matching dollars per child support case is not consistent among the

eight regions, meaning some units spend more to provide child support enforcement services than others.

- As a result of the 1997 SWAP legislation, there is a net cost to county government to run the child support enforcement program locally.
- Changes in federal requirements are requiring states to centralize an increasing number of functions of child support enforcement.
- The state's automated child support system gives child support caseworkers the power to work any case in the state child support inventory from any location via a computer terminal.

In performing the audit the consultant found that although the state conducts some training at the state level to convey statewide policy and procedures, the reality is that it is regional child support enforcement units that implement this policy. Inconsistencies in policy and procedure may mean inconsistent service levels and approaches to customers based on the region in which a customer lives. This inconsistent approach can lead to complaints of unfair or inequitable treatment.

The representative of the consulting firm testified that moving to a state-administered program may produce economies of scale, a more level playing field, and a more consistent policy that in turn could produce a more efficient operation. A more efficient operation can serve more people with the same service delivery level or serve the same number of people at a higher service delivery level. Additionally, changing to a state-administered child support enforcement program should not adversely affect delivery of services in rural areas. To the contrary the change might lead to better service delivery in rural areas as the experts who can be found in other portions of the state can assist rural caseworkers who may be generalists and not experts in every facet of a fairly complicated program.

The committee received the following financial estimates:

- The cost to the state of moving to a state-administered program is about \$140,000 in one-time costs and \$25,500 per month in ongoing costs. With the federal government paying 66 percent, the state's share would be \$48,000 in one-time expenses and \$8,500 per month in additional costs. Additionally, there would likely be increased efficiencies and increased federal incentive dollars as a result of moving to a state-administered system, which would somewhat offset the added cost in the second year of the state-administered program.
- If costs of the regional child support enforcement unit budgets were taken over by the state, moving to a state-administered program would cost \$416,174 in one-time costs and \$454,858 in new monthly costs.
- Under the county-administered program, the regional units receive 75 percent of 99 percent of the federal incentives, which would return to the state under a state-administered system. In 2000 that amount of federal incentives would have

been \$630,000. Additionally, the state's share of TANF recoupment would be solely retained by the state after moving to a state-administered system because enforcement is done at the state level.

Department of Human Services Division of Child Support Enforcement

A representative of the Department of Human Services Division of Child Support Enforcement testified the department would not support state administration of the child support enforcement program unless the change was budget-neutral. Testimony was received that if the program were changed to a state-administered program, but the 1997 SWAP legislation was not changed, the counties would receive a \$7.8 million windfall for the biennium.

A representative of the Department of Human Services Child Support Enforcement Division testified that possible efficiencies that may be recognized under a state-administered child support enforcement program include:

- Specialization for tribal cases;
- Specialization for interstate cases;
- The possibility of a statewide prosecutor to target nonpayment and nonsufficient fund cases;
- Increased efficiency in locator services;
- Increased ease of servicing child support enforcement cases as parties move within the state; and
- The possibility of consolidation of income withholding orders.

The committee received testimony that under a state-administered child support enforcement program, although there may be a state-administered customer service unit, it would be unlikely any of the existing eight regional child support enforcement units would close, because of the importance of balancing consolidation of services and reasonable access to caseworkers at the local level.

There are approximately 38 full-time equivalent positions in the state child support enforcement office and 120 full-time equivalent positions under cooperative agreement at the eight regional unit offices. Five of the regional units are already under the state employee classification system, and a review of the other three regional units indicated all the staff were within the appropriate salary ranges except for two individuals who appeared to be over the salary range in the amount of \$444 and \$380 per month. Under a state-administered system, the department's intent is that these individuals would stay at their pay levels until the pay ranges caught up with the current amount being paid.

A representative of the Department of Human Services Division of Child Support Enforcement testified that because the child support enforcement system at the federal level was essentially designed as a recoupment mechanism for public services, the federal government keeps raising the bar to make the child support enforcement system more effective and uses funding as an incentive to reach these higher benchmarks.

Historically, child support enforcement expenses have increased over time; however, if administrative costs increase, efficiencies under a state-administered program may help avoid or delay these increases. Without the efficiencies that would result from state administration, the counties will likely have to spend more money on administration of the program in future years.

The committee received testimony that a county-financed state administration of the child support enforcement program would neither aggravate nor eliminate the problems experienced by counties in which there is an Indian reservation. Additionally, state administration would have little effect on the role of county commissioners in the administration of the program.

Testimony was received that the child support enforcement interactions with the state and the Indian tribes are in a state of flux. Federal regulations that would govern how Indian tribes may provide child support enforcement services and draw federal funds to cover these costs have been pending for nearly two years. A representative of the Department of Human Services Division of Child Support Enforcement testified that until these federal regulations are finalized, much of what can or should be done at the state level cannot be implemented. Testimony was received that the Department of Human Services will not commit state resources to the provision of child support enforcement services on the Indian reservations without first knowing the financial impact, which in part depends upon finalization of the federal regulations.

County Social Services Boards

The committee received testimony regarding the 1997 SWAP legislation. Testimony indicated that when the SWAP legislation was implemented in 1998, the regional child support enforcement units became primarily funded by county property tax, while the Department of Human Services retained the 66 percent available federal match for every county dollar expended. Although counties still receive 75 percent of the federal incentive dollars, because of changing methods of incentive reimbursement, the actual funds have been significantly reduced and the counties support reevaluating the funding system established in the 1997 SWAP legislation. Representatives of the County Social Services Board Members Association and the County Commissioners Association testified in support of state administration, with full state funding of the program.

A representative of the county social services boards testified that advantages to establishing a single structure for administration of the child support enforcement program may include:

- Clear lines of responsibility and authority;
- Simplified program funding (decreased property taxes);
- Lower overall administrative costs; and
- Improved collection of child support on Indian reservations.

Potential risks to the establishment of the state-administered child support enforcement program may include:

- The current structure allows for structured discussion and disagreements of policy and administrative issues and concerns, including a broader range of feedback from various players on legislative issues; and
- The system could lose local responsiveness to clients.

The committee received significant testimony from representatives of county social services boards. Concern was expressed that counties are faced with insufficient tax revenues in part due to the amount of property that is Indian reservation land or trust land; the change in taxable status as previously taxable land becomes untaxable if an Indian tribe purchases the land and it is put in trust; the declining population in non-Indian reservation land; decreased tax value of flooded property; and the low tax value of taxable property.

The committee received testimony that non-Indian counties subsidize social service financial obligations of the counties in which an Indian reservation is fully or partially located. There are plans for these non-Indian counties to cease subsidizing these Indian counties. It is likely that county revenue will continue to decline while social services costs continue to grow in proportion to the economically stressed but growing Native American population. A representative of the county social services boards testified in support of immediate 100 percent state funding of child support efforts on behalf of the eight Indian counties and state administration of those eight counties only if 100 percent of funding is provided by the state.

Association of Counties

Representatives of the North Dakota Association of Counties testified in support of state administration of the child support enforcement program, contingent on the state taking full financial responsibility of the program. Testimony was received by the committee that transition to a state-administered child support enforcement program would result in a reduction of county social services costs of approximately \$4 million per year, resulting in property tax levies for social services purposes being reduced by three to four mills in each county.

A representative of the North Dakota Association of Counties testified that given that the federal government has been taking increased control over the child support enforcement programs from the states and counties, North Dakota counties have very little control over the program, and therefore, the counties support state funding and state administration of the program.

The committee received testimony in opposition of a state-administered but county-funded child support enforcement program. Testimony was received that the proposal to change to a state-administered program came at a time when the Department of Human Services was dealing with a deficit and facing even greater fiscal

issues in the 2003 legislative session. State administration with county funding would take away the little control counties have with no reduction in county fiscal responsibilities.

Attorney General

A representative of the Attorney General's office testified that from a legal perspective there may be some efficiencies that would result from changing to a state-administered child support enforcement program, including allowing for certain employees to become specialists in areas such as tribal practice and interstate practice. The Attorney General took a neutral position on the study of changing to a state-administered child support enforcement program.

Interested Persons

The committee received testimony from a customer of the county-administered child support enforcement program. The individual testified in support of a state-administered program, based on the belief that moving to a state-administered program would increase the education of caseworkers and increase accountability of the regional units to the state.

Committee Considerations

The committee considered a bill draft that would have provided for a state-administered child support enforcement program. The bill draft would have been budget-neutral, in that it based county contributions to the state on year 2001 payment levels for county funding of the program. The bill draft would have authorized the Department of Human Services to employ special assistant attorneys general.

Recommendations

The committee recommends House Concurrent Resolution No. 3002 to provide for a Legislative Council study of loss of tax revenues from flooded property and from previously taxable property that is purchased by tax-exempt entities and of the impact of the tax status on the ability of local communities to provide social services.

The committee recommends House Concurrent Resolution No. 3003 to provide for a Legislative Council study of state and local funding obligations for social services.

ADOPTION LAW STUDY

Background

Generally, adoption is a creature of state law, and although all 50 states have different ways of dealing with the issue of adoption, the overall adoption scheme is similar in most states. Some of the similarities between states' adoption laws include:

- All states allow the adoption of a child;
- All states allow the adoption of a foreign-born child;
- A single adult or a husband and wife together can adopt;

- A child may be placed with prospective adoptive parents by the public agency responsible for adoptions or by a private agency;
- A person may not be paid for placing a child for adoption; however, reasonable fees may be charged;
- All adoption hearings take place in state courts;
- All adoptions are based upon the consent of persons or agencies legally empowered with the care or custody of the children being adopted;
- An investigation and home study to determine the appropriateness of particular adopting parents are required before an adoption can occur;
- All adoption proceedings are confidential and held in a court that is closed to the public or in a judge's chambers and all documents pertaining to an adoption are sealed and kept as permanent records of the court in a locked file; and
- The adoptive parents or adult adoptee can receive limited information that does not identify the biological parents.

Areas that differ from state to state include:

- Who is required to consent to an adoption--for example, the mother, father, agency, and adoptee;
- When and how consent may be executed and revoked;
- Who may adopt, who may be adopted, and who may place a child for adoption;
- Whether the state has a putative father registry, information contained in the registry, revocation of information contained in the registry, notice requirements of registered putative fathers, and who has access to the registry;
- Whether and how the state regulates fees and expenses such as birth parent expenses, agency fees and costs, intermediary fees, payments for relinquishing a child, and state agency fees; and
- The specifics of how and to what extent the state recognizes a foreign adoption.

2001 Legislation

Senate Bill No. 2252 increased from \$1,000 to \$1,750 the long-form income tax deduction for adoption expenses and allowed the deduction to be carried forward for up to five taxable years. The bill also allowed a deduction from federal income tax liability on the short-form individual income tax return in the amount of the taxpayer's federal qualified adoption expenses credit, not exceeding \$1,750.

Previous Legislation

In 1999 Senate Bill No. 2171 implemented the federal Adoption and Safe Families Act of 1997 and amended the adoption procedures statute to require that the reports and assessments of adoptive parents include a criminal history record investigation. The federal law affected the adoption of foster children and redefined "reasonable efforts," "case plans," and "reviews" for purposes of foster care adoptions; addressed

termination of parental rights for foster care children; provided who must be given notice of foster care adoption proceedings; changed the timeframe for permanency planning hearings for foster care children; and limited the time for reunification services for foster care children.

In 1999 Senate Bill No. 2388 provided that under certain circumstances, the court may waive the adoption investigation and report requirements for an adopting party who is a grandparent, brother, sister, stepbrother, stepsister, uncle, or aunt of an adoptee.

In 1993 House Bill No. 1107 updated the law pertaining to access to information regarding genetic parents, siblings, and children.

In 1993 Senate Bill No. 2294 made changes to the notice requirements for the adoption of an adult and provided the court with discretion to prevent the parents of an adult adoptee from attending the adoption hearings and proceedings.

Testimony

The committee considered federal laws that directly impact adoption, including the Intercountry Adoption Act of 2000, Child Citizenship Act of 2000, Adoption and Safe Families Act of 1997, Multiethnic Placement Act of 1994, and the Indian Child Welfare Act of 1978. As a result of the federal Adoption and Safe Families Act of 1997, states were required to make substantial changes in state law. In 1999 the North Dakota Legislative Assembly enacted Senate Bill No. 2171 to implement the requirements of the Act. The committee received testimony that although implementation of the federal Adoption and Safe Families Act of 1997 was a substantial burden on the state as an unfunded mandate, the Act has been very successful in improving appropriate and timely placement of foster children.

The committee received information regarding adoption statistics for North Dakota. There are six child-placing agencies in the state, all of which have been licensed for many years. In fiscal year 2001 there were 181 agency-facilitated adoptions, of which 113 were adoptions of children with special needs, 19 were adoptions of foreign-born children, and 49 were adoptions of healthy infants, and there were an additional 155 stepchildren adopted by their stepparents. In addition to the total number of agency-facilitated finalized adoptions increasing, the number of finalized adoptions of children with special needs has increased significantly--44 in 1998, 61 in 1999, 40 in 2000, and 113 in 2001. In calendar year 2000 the Turtle Mountain Tribe adjudicated 20 adoptions through the tribe's affiliation with the AASK program.

A representative of the Department of Human Services Division of Child and Family Services testified that North Dakota law is very restrictive in how it treats the placement of a child with an adoptive family before the termination of the biological parents' rights and is very restrictive in how it treats the openness of adoption information.

The committee received testimony that recent legislative activities in other states have included:

- Openness in adoption and the desire of adult adoptees to open previously sealed records;
- Passive adoption search registries;
- Legal risk adoption practices;
- Adoption facilitation;
- Statutory limitations of fees;
- Putative father registries;
- Limitations on advertising; and
- Criminal background history investigations.

During the course of the study, the committee received proposed bill drafts from an informal task force of licensed child-placing agency representatives which discussed adoption laws. With the exception of the task force's proposed bill draft regarding child-placing agencies, which was the final proposal presented to the committee, the task force shared its work product with adopted individuals, birth parents, and adoptive parents in order to receive feedback.

The task force initially made the following recommendations of areas in need of being addressed:

- Openness of adoption records;
- Sealed birth certificates;
- Adoption search and disclosure;
- Father registries;
- Statutory limitations on fees paid to birth parents and paid for adoption services;
- Statutory limitations on adoption facilitation and advertisement;
- Definition of special needs children;
- Child-placing agency licensure;
- Increasing statutory references to the Indian Child Welfare Act; and
- Discrimination relating to employment benefits for adoptive parents.

Ultimately the task force presented to the committee six proposed bill drafts relating to the state's version of the Revised Uniform Adoption Act, child relinquishment to identified adoptive parents, the state's version of the Uniform Parentage Act, creation of a paternity registry, assistance for adopted children with special needs, and licensure of child-placing agencies. In addition to the six proposed bill drafts presented to the committee, the task force recommended legislative action to align the provisions of the North Dakota Century Code (NDCC) relating to relinquishment of parental rights.

Revised Uniform Adoption Act - NDCC Chapter 14-15

The task force presented a bill draft amending NDCC Chapter 14-15, the Revised Uniform Adoption Act. A member of the task force testified that the bill draft:

- Creates definitions for the terms "abandonment," "department," "identifying information," "investigation," and "stepparent."
- Provides that a petition for adoption and a report filed by the petitioner must state that the petitioner's expenses were reasonable, and gives

guidance to what types of fees may be reasonable or unreasonable.

- Provides that a court shall make a finding as to the reasonableness of fees paid by the petitioner.
- Clarifies the residency requirements as they apply to various adoption situations.
- Provides that a reasonable fee may be charged for furnishing nonidentifying information.
- Clarifies that identifying and nonidentifying information may be shared between consenting parties to the adoption.
- Removes the search prohibition of birth parents and birth siblings in the case of involuntary adoptions.
- Provides that an adult child of a deceased adopted individual may initiate a search for identifying and nonidentifying information.
- Provides that a nonconsenting party may not stop the disclosure of information between consenting individuals.
- Provides the Department of Human Services may share adoption information with an Indian tribe to determine the eligibility of the adopted individual for enrollment in an Indian tribe.
- Removes the ten-day withdrawal period for relinquishment of a birth parent's parental rights.

The committee was informed the provisions in the bill draft which deal with the reasonableness of expenses of a petitioner were very loosely patterned on Minnesota's law. A member of the task force testified that although in practice it may be difficult for a court to deal with unreasonable expenses after the expenses were already paid, the court has discretion to deny unreasonable expenses or take other appropriate action.

Current adoption law provides that if an adopted individual seeks identifying information regarding birth parents, refusal of one birth parent to consent to disclosure has the effect of prohibiting disclosure regardless of whether the second birth parent consents to disclosure of identifying information. Members of the task force testified that North Dakota's law regarding openness of adoption information is very restrictive, and the bill draft makes North Dakota's law more consistent with the trend of more openness in access to adoption information.

The committee received testimony from an adopted individual, in support of increasing the openness of adoption records. Information was presented indicating that opening adoption records would not negatively affect adoption rates and would not increase abortion, based on statistics from Alaska and Kansas. Additionally, the committee received testimony from a birth mother who placed her child for adoption, in support of increasing openness of adoption records, stating that the state's laws are outdated. The committee reviewed the adoption laws of North Dakota and other states regarding access to birth certificates, identifying information, and nonidentifying information.

The committee received testimony from representatives of child-placing agencies regarding the procedure followed, costs associated with, and services offered by

child-placing agencies in searching for identifying and for unidentifying adoptive information. The representatives expressed the importance of providing counseling and other services in assisting in searching for and disclosing adoption information.

Child Relinquishment to Identified Adoptive Parents - NDCC Chapter 14-15.1

The task force presented a bill draft amending NDCC Chapter 14-15.1 relating to child relinquishment to identified adoptive parents. A member of the task force testified that the bill draft:

- Provides that a report filed by the petitioner may reflect that reasonable fees were paid. This language is consistent with the language in the bill draft amending Chapter 14-15.
- Provides that a court shall make a finding as to fees paid.
- Extends the time for filing of a petition for adoption from three months to six months, to be consistent with the residency requirements of the bill draft amending Chapter 14-15.

Uniform Parentage Act - NDCC Chapter 14-17

The task force presented a bill draft amending NDCC Chapter 14-17, the Uniform Parentage Act. The bill draft changes the terms "natural mother," "natural father," and "natural parent" to biological mother, biological father, and biological parent. The change in terms is not intended to be substantive.

Paternity Registry - NDCC Title 14

The task force presented a bill draft creating a new chapter to NDCC Title 14 creating a paternity registry. A member of the task force testified that the bill draft:

- Provides that the State Department of Health Office of Statistical Services shall establish and administer a paternity registry, with which a man may claim that he may have fathered a child.
- Provides the purpose of the paternity registry is:
To expedite adoptions of children whose biological fathers are unwilling to assume parental responsibility of their children by registering with the registry or otherwise acknowledging their children; and

To protect the parental rights of biological fathers who affirmatively assume responsibility for children they may have fathered.

- Provides that by registering with the paternity registry, a putative father is entitled to notice of an action to terminate his parental rights.
- Provides that a man is not required to register with the paternity registry in order to assert paternity or receive notice of a termination of parental rights action if he:
Is the presumed father under NDCC Chapter 14-17;
Has been adjudicated to be the biological father of a child; or

Has filed an acknowledgment of paternity under NDCC Chapter 14-17 or 14-19.

- Provides that the paternity registry does not relieve a mother of any obligation to identify the known father of her child.

A member of the task force testified that the paternity registry bill draft was an attempt by the task force to use the best practices of other states that have paternity registries. Approximately 21 states provide for some sort of paternity registry. The committee received testimony that the registry is not intended to remove the obligation of a child-placing agency to request information regarding the identity and location of the biological father.

Assistance for Adopted Children With Special Needs - NDCC Section 50-09-02.2

The task force presented a bill draft amending NDCC Section 50-09-02.2 regarding assistance for adopted children with special needs. A member of the task force testified that the bill draft expands the definition of a child with special needs to include a child who is at high risk for a physical, mental, or emotional disability due to the circumstances of birth, deprivation in developmental years, or the birth parent having a medical or social history. Current law requires that a determination of handicap be made before the classification as a special needs child. The effect of the bill draft is to expand the class of children who could be classified as special needs.

The committee received testimony that the need for expanding the definition of special needs children results in part from the fact that as children are being placed in foster care more quickly and at a younger age, it is more likely that a child who is less than five years old has a physical, an emotional, or a mental handicap that has not been diagnosed or recognized. By expanding the definition of special needs children, the at-risk children would not necessarily be given the full package of benefits associated with being classified as a special needs child, but the classification would allow the adoptive parents to sign a form that would clarify that assistance will be made available if the child does exhibit a handicap at a later date, thereby letting adoptive parents know that special services will be made available if the adopted child develops a need for these services. Additionally, the committee received testimony that by being classified as a special needs child, an adoptive family would be able to access federal funds, which in the long run would save the state money.

Child-Placing Agencies - NDCC Chapter 50-12

The task force presented a bill draft regarding the state's child-placing agency law. A member of the task force testified that the bill draft:

- Removes the current annual child-placing agency licensure requirement to allow for a two-year license for those agencies that are in good standing and that also have an established history in the state.

- Codifies the current practice of allowing a child-placing agency to consider all criminal background information when making a recommendation in a home study report.
- Makes the procedures used in foster care placements consistent with procedures used in adoption placements.
- Codifies the current department requirement that fees charged by a child-placing agency must be related to documented expenses of the agency.
- Provides a child-placing agency license may be revoked for violation of Chapter 50-12.
- Adds permanent guardianship to the class of guardianships that require that the Department of Human Services be notified if the guardianship involves bringing the child into the state for the guardianship.
- Provides that the child-placing agency licensure requirements extend to facilitator agencies that maintain lists of prospective adoptive parents and birth parents to make matches for a fee.

Recommendations

The committee recommends six bills based on the bill drafts proposed by the informal task force of licensed child-placing agency representatives discussing adoption laws.

The committee recommends House Bill No. 1035 to amend the state's version of the Revised Uniform Adoption Act as proposed by the task force.

The committee recommends House Bill No. 1036 to amend the law relating to child relinquishment to identified adoptive parents as proposed by the task force.

The committee recommends Senate Bill No. 2034 to update the state's version of the Uniform Parentage Act as proposed by the task force.

The committee recommends Senate Bill No. 2035 to create a paternity registry as proposed by the task force.

The committee recommends Senate Bill No. 2036 to broaden the class of children eligible for certification as a special needs adoption as proposed by the task force.

The committee recommends House Bill No. 1037 to amend the child-placing agency licensure laws as proposed by the task force.

PRIVACY LAW STUDY

Senate Concurrent Resolution No. 4019 provided for a study of the medical and financial privacy laws in the state; the effectiveness of medical and financial privacy laws in other states; the interaction of federal and state medical and financial privacy laws; and whether current medical and financial privacy protections meet the reasonable expectations of the citizens of this state.

The study resolution was adopted and prioritized before the referral petition on 2001 Senate Bill No. 2191 was filed with the Secretary of State. As a result of the pending June 2002 referral vote, the committee's focus on the financial portion of the privacy study was information gathering on the impact of 2001 Senate Bill No. 2191 on privacy and economic development; the

possible privacy and economic development impacts of approval or rejection of the referred measure; and of the privacy provisions of the federal Financial Services Modernization Act of 1999, which is also known as the Gramm-Leach-Bliley Act. Additionally, the committee reviewed an Attorney General's opinion dated May 22, 2002, addressing certain elements of the state's financial privacy law.

The medical privacy aspect of the study focused on the impact of implementation of the federal Health Insurance Portability and Accessibility Act (HIPAA).

Background

The 57th Legislative Assembly passed seven bills concerning access to personal or financial information. House Bill No. 1082 provided that if the Commissioner of Financial Institutions furnishes confidential information to a third party authorized to receive that information, the information remains confidential in the possession of the third party, and likewise, if the commissioner receives confidential information, that information remains confidential in the possession of the commissioner. The bill also expanded the persons to whom the commissioner may furnish information and may enter sharing agreements to include the Insurance Commissioner and the Securities Commissioner.

House Bill No. 1234 provided that a medical release is valid for three years or the time specified in the release, whichever is less. The bill also allowed for termination of the release at any time and allows a provider to share medical information with another provider during the time necessary to complete a course of treatment.

House Bill No. 1329 provided a financial institution may disclose customer information for the purposes of reporting suspected exploitation of a disabled adult or vulnerable elderly adult.

Senate Bill No. 2065 required a North Dakota federally chartered corporate credit union to allow the Commissioner of Financial Institutions to access records and sets a rate of reimbursement for the credit unions for searching and processing records.

Senate Bill No. 2117 provided a definition of customer as it pertains to the sharing of commercial or financial customer information by the Bank of North Dakota.

Senate Bill No. 2127 provided that insurance companies, nonprofit health service corporations, and health maintenance organizations are required to comply with the privacy provisions of Title V of the Gramm-Leach-Bliley Act. Additionally, the bill allows the Insurance Commissioner to adopt rules to implement the Gramm-Leach-Bliley Act if the rules are consistent with and not more restrictive than the model regulation adopted by the National Association of Insurance Commissioners.

Senate Bill No. 2191 provided that the state's statutory provisions relating to the disclosure by financial institutions of customer information are not applicable if a disclosure is subject to federal law and the financial institution complies with the federal law. The bill also

provided temporary disclosure requirements applicable to agricultural and commercial customers of financial institutions, effective through July 31, 2003. This bill became void, effective June 11, 2002, as a result of the referral vote, referred to previously in this report.

Financial Privacy Testimony

Before the June 2002 referral vote on 2001 Senate Bill No. 2191, the committee reviewed recent financial privacy legislation across the country; reviewed the privacy provisions of the federal Gramm-Leach-Bliley Act; considered the legality and desirability of introducing financial privacy legislation during the special session of the 57th Legislative Assembly held for the purpose of redistricting; and received testimony from a wide variety of persons interested in financial privacy.

In addition to addressing the impact on banks and credit unions of the privacy provisions of the federal Gramm-Leach-Bliley Act, the committee received testimony from a representative of the State Bar Association of North Dakota regarding the possible impact of the federal law on lawyers and from a representative of the Insurance Commissioner regarding the commissioner's activities related to compliance with the federal Act.

After the June 2002 referral vote, the committee focused on the interpretation of the state's financial privacy law and the desirability of recommending legislation to amend the state's financial privacy law. The committee did not receive testimony advocating changing from opt-in authorization to opt-out authorization for the sharing of customer information by financial institutions; however, testimony received from representatives of the North Dakota Bankers Association, the Commissioner of Financial Institutions, representatives of the Independent Community Banks of North Dakota, a representative of Community First Bankshares, and a representative of the North Dakota Credit Union League testified in support of legislative changes ranging from clarification of existing law to incorporating all of the exceptions of the federal Gramm-Leach-Bliley Act. Additionally, the committee received testimony from representatives of Protect Our Privacy, the sponsoring committee for the referral of Senate Bill No. 2191, in support of amending the state's financial privacy law to prohibit affiliate sharing of customer information by financial institutions; in support of increasing medical privacy, insurance privacy, and securities privacy; and in support of increasing limitations on government sharing of information.

In a financial privacy matter unrelated to the federal Gramm-Leach-Bliley Act, the committee reviewed the laws of Washington and California regarding limiting the information that may be included on an electronically printed credit card receipt.

Insurance Privacy

The committee received an update from a representative of the Insurance Commissioner regarding the status of the commissioner's financial privacy

administrative rules. The committee reviewed the proposed administrative rules of the commissioner.

The Insurance Commissioner's rules went into effect December 1, 2001, and were based on the National Association of Insurance Commissioners model regulations, providing an opt-out provision for financial information and an opt-in provision for health information. The referral of Senate Bill No. 2191 did not affect the Insurance Department's administrative rules on privacy.

A representative of Protect Our Privacy testified in support of increasing customer insurance privacy by requiring opt-in authorization for the sharing of customer information by insurance companies.

Lawyer Privacy

A representative of the State Bar Association of North Dakota testified regarding the possible applicability of the federal Gramm-Leach-Bliley Act to lawyers. The committee was informed that the Federal Trade Commission had taken the position that law firms and sole practitioners "significantly engaged in financial activities" are considered financial institutions and are therefore subject to the provisions of the Act. The American Bar Association had requested the Federal Trade Commission to exempt the legal community from the Act. On April 8, 2002, the Federal Trade Commission informed the American Bar Association of the commission's determination not to grant the exemption requested. On September 25, 2002, the American Bar Association filed suit to end the imposition of the privacy provisions of the Act.

Banking and Credit Union Privacy

Following the June 2002 referral vote, the committee received extensive testimony from persons interested in the financial privacy study. Testimony focused on the scope and interpretation of the state's financial privacy law and whether it was desirable to clarify or substantively change the state's financial privacy law.

Representatives of Protect Our Privacy testified in opposition to making any changes to the state's financial privacy law which would make it easier for financial institutions to disclose a customer's information. Protect Our Privacy supported treating all North Dakota-chartered financial institutions identically, regardless of physical location, and treating all customers who do business with North Dakota-chartered financial institutions identically, regardless of the customer's state of residence.

The committee received testimony from representatives of financial institutions regarding areas of the state's financial privacy law which would benefit from clarification, including clarification of the definitions of financial institution, customer, and agent. Clarification of the terms "financial institution" and "customer" would help to clarify the scope and reach of the state's law. Additionally, testimony was received that the state's law may not be clear regarding whether an agent of a financial institution has a duty of maintaining the confidentiality of customer information.

The issue of clarification of definitions in large part focused on the scope of the state's financial privacy law and whether the state's law was exported to out-of-state financial institutions and out-of-state customers.

A representative of the North Dakota Bankers Association testified that a definition of customer which included out-of-state customers and a definition of financial institution which included those institutions that are physically located outside the state would disadvantage North Dakota financial institutions that have out-of-state facilities and may negatively affect North Dakota banks such as Community First Bankshares and US Bank, which have a majority of their customers out-of-state.

The committee received testimony from the Commissioner of Financial Institutions regarding the Attorney General's opinion dated May 22, 2002, which addressed some of the issues concerning how the state's financial privacy law will be applied to financial institutions. The commissioner testified that the opinion leaves some questions regarding the exportation of the state's law unanswered.

The following is how the Attorney General addressed financial privacy in his May 22, 2002, opinion:

- What qualifies as an "agent of a financial institution" as that term is used in NDCC Section 6-08.1-02(1)?

An entity acting for a financial institution in providing services to the financial institution's customers pursuant to a contract is an agent of the financial institution, regardless of how the parties characterize their relationship.

- If 2001 Senate Bill No. 2191 is rejected by the voters pursuant to the pending referral, may a financial institution subject to NDCC Chapter 6-08.1 disclose customer information without a customer's express consent as necessary in the course of providing the customer a service inherent in the business of financial institutions either directly or through a third party?

A financial institution is not required to obtain a customer's affirmative consent to share information with the financial institution's employees or agents in the course of providing services the customer requests, including automated teller machine, credit card, and checking services, regardless of whether Senate Bill No. 2191 is rejected.

- If Senate Bill No. 2191 is rejected, what financial institutions will be subject to Chapter 6-08.1?

North Dakota Century Code Chapter 6-08.1 applies to financial institutions physically located in North Dakota and how those institutions treat the financial information of their customers located in North Dakota. Chapter 6-08.1 does not apply to financial institutions located outside North Dakota and how those institutions treat the financial information of their customers located outside North Dakota. Whether Chapter 6-08.1 applies to other transactions or relationships

between financial institutions and their customers depends on the resolution of a myriad of factual circumstances.

- Which, if any, privacy provisions of the federal Gramm-Leach-Bliley Act will apply to financial institutions subject to Chapter 6-08.1 if Senate Bill No. 2191 is rejected?

If Senate Bill No. 2191 is rejected by voters, North Dakota financial institutions will be required to comply with all of the federal Gramm-Leach-Bliley Act provisions that are not specifically addressed by Chapter 6-08.1. If a financial institution's customer has consented to the financial institution's sharing of the customer's information, the financial institution is required to comply with the federal Act's information protection provisions in their entirety.

Extensive testimony was received regarding the uncertainty in the financial industry over the circumstances in which a financial institution may share customer information with a third party in the course of providing services that a customer has requested or in the course of performing acts that are perceived to be incidental powers necessary to carry on the business of a credit union or bank. Suggestions received by the committee to deal with these issues included:

- Taking no action, but relying on the May 22, 2002, Attorney General opinion.
- Codifying the federal Gramm-Leach-Bliley Act exceptions for marketing and servicing under Section 502(b)(2) of the Act and for general operating under Section 502(e) of the Act; general operating under Section 502(e) of the Act; or limited general operating under Section 502(e)(1) and (2).

The marketing and servicing exceptions under Section 502(b)(2) of the federal Act allow financial institutions to disclose customer information to nonaffiliated third parties to perform services on behalf of the financial institution. The general operating exceptions under Section 502(e) allow financial institutions to disclose customer information to nonaffiliated third parties if the disclosure is necessary to effect, administer, or enforce a transaction requested or authorized by the consumer in connection with servicing or processing a product, service, or transaction requested or authorized by the consumer (502(e)(1)); is made with the consent or at the direction of the consumer (502(e)(2)); is made to protect against fraud; is made to a consumer-reporting agency; is made in connection with a merger or sale of the financial institution; is made to comply with a regulatory investigation; is made to lawyers and auditors; and is made in other circumstances in which opt-out would not be practical or expected to be provided.

Testimony received by the committee indicated that benefits of clarifying the terminology and scope of the state's financial privacy law through legislation may include decreased liability for financial institutions and the benefit of having the Legislative Assembly make public policy decisions instead of the State Banking

Board, State Credit Union Board, Attorney General, or Supreme Court.

Electronically Printed Credit Card Receipts

The committee reviewed the laws of Washington and California regarding limitations on the information included on an electronically printed credit card receipt. The laws of California and Washington are nearly identical and require that electronically printed credit card receipts provided to a customer limit credit card account information to no more than the last five digits of the credit card number and do not include expiration information. Exceptions to these laws include that the restrictions would not apply to transactions in which the sole means of recording the customer's credit card number was by handwriting or by an imprint copy of the credit card. The effective date of the laws varied based on when the cash register was put into use in order to allow for an appropriate transition period.

Financial Privacy Considerations

The committee considered a bill draft that would have incorporated all the general operating exceptions under Section 502(e) of the federal Gramm-Leach-Bliley Act. The bill draft also would have provided that a financial institution that shared customer information with an affiliate or a nonaffiliated third party would be required to enter a contract providing the affiliate or nonaffiliated third party would keep the customer information confidential.

The committee considered a bill draft that would have limited the scope of the state's financial privacy law to protection of customer information of customers who reside or are domiciled in North Dakota.

Financial Privacy Recommendations

The committee recommends House Bill No. 1038 to provide that a customer is protected by the state's financial privacy law, regardless of the state or residence or domicile and that the state's financial privacy laws apply to financial institutions that are physically located in the state. The bill also provides for incorporation into the state's financial privacy law the federal Gramm-Leach-Bliley Act exception provisions of Section 502(e)(1) and (2), allowing for sharing of customer information:

1. As necessary to effect, administer, or enforce a transaction that is requested or otherwise authorized by the customer;
2. In connection with servicing or processing a financial product or financial service that is requested or otherwise authorized by the customer;
3. In connection with maintaining or servicing the customer's account with the financial institution;
4. In connection with maintaining or servicing the customer's account with another person as part of a private label credit card program or as part of some other extension of credit on behalf of that other person; or

5. At the direction or with the consent of the customer.

The committee recommends Senate Bill No. 2037 to limit the credit card number information that may be included on an electronically printed credit card receipt. The bill would become operative on January 1, 2004, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions which is first put into use after December 31, 2003, and would become operative on January 1, 2007, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions which is first put into use before January 1, 2004.

Medical Privacy Testimony

The committee reviewed some of the extensive background and history of the federal Health Insurance Portability and Accountability Act and reviewed several of the state laws pertaining to medical privacy. As in the federal Gramm-Leach-Bliley Act, the privacy provisions are just one portion of the federal Health Insurance Portability and Accountability Act.

The committee received testimony that the privacy provisions under the federal Health Insurance Portability and Accountability Act came about as the result of administrative simplification that requires all health care insurers to establish uniform billing and coding systems in order to simplify and reduce the administrative costs of the health care system. Congress realized that a uniform electronic billing system would greatly reduce the cost and increase the capacity for accidental or intentional disclosure of individually identifiable health information; therefore, Congress set a deadline for itself to enact health care privacy legislation by August 1999. Congress also provided that if that August 1999 deadline was not met, the Secretary of Health and Human Services would be required to establish regulations to protect the privacy and security of health information. Congress did not meet the 1999 deadline and on December 28, 2000, the final rules on privacy of individually identifiable health information were published. The compliance date for most organizations is April 14, 2003; however, small insurers have an additional year to come into compliance.

Under the Act, the privacy rules cover health plans, health care clearinghouses, and those health care providers who conduct certain financial and administrative transactions electronically. The privacy rules for the first time create national standards to protect an individual's medical records and other personal health information. The rules give patients more control over their health information; set boundaries on the use and release of health records; establish appropriate safeguards that health care providers and others must achieve to protect the privacy of health information; hold violators accountable if they violate patients' privacy rights; and strike a balance when public responsibility requires disclosure of some forms of data.

A representative of the Attorney General's office reported that the federal medical privacy rules require the average health care provider to:

- Provide information to patients about the patients' privacy rights and how the patients' information may be used.
- Adopt clear privacy procedures for a provider, hospital, or plan.
- Train employees so they understand privacy procedures.
- Designate an individual to be responsible for seeing that the privacy procedures are adopted and followed.
- Secure patient records containing individual identifiable health information so that they are not readily available to those who do not need them.

The committee received testimony from a representative of the Department of Human Services regarding the department's efforts to comply with the Act. In addition to working with the Attorney General's office regarding compliance with the Act, the Department of Human Services established a team of individuals representing the payers, providers, and the Legal Services Division of the department to analyze and complete the implementation of the privacy project. The Department of Human Services privacy project was broken into the following phases:

- Review and understand the privacy rules and compare these with current state and federal regulations to determine which apply.
- Complete an inventory of areas within the department which have protected health information and determine areas of information sharing internally and externally.
- Analyze this data to determine areas that will require business associate agreements and determine the minimum amount required to accomplish the intended purpose of the use or disclosure.
- Analyze policies and procedures and modify those that do not meet the privacy rule standards.
- Analyze current practices concerning the use of protected health information and provide training on the new privacy standards and the rules and regulations regarding privacy to ensure future practice meets the privacy standards.
- Develop and execute business associate agreements with entities with which the department shares information.
- Implement a complaint process and ongoing monitoring.

Representatives of Blue Cross Blue Shield of North Dakota testified regarding the undertaking of complying with the federal medical and financial privacy laws. The committee was informed that the costs associated with complying with the federal privacy requirements would be borne by the individual members of Blue Cross Blue Shield of North Dakota. Because the costs would be added to insurance premiums and because of the complexity and the resources required to comply with the

federal privacy laws, Blue Cross Blue Shield testified in opposition to any new medical privacy legislation, especially until the federal requirements are fully implemented.

A representative of the Attorney General's office reported that the Attorney General's office, as part of an informal group known as the North Dakota HIPAA Coalition, was comparing North Dakota law to the federal privacy laws under the Health Insurance Portability and Accountability Act to determine whether state law provides less privacy protection than the federal privacy law, the same protection as the federal privacy law, or more privacy protection than the federal privacy law. The nature of the Health Insurance Portability and Accountability Act is that if a state law provides less privacy protection than the federal privacy law, the state law is superseded by the federal privacy law; if state law provides the same privacy protection as the federal privacy law, then a covered entity can comply with both North Dakota law and the federal privacy law; and if a state law provides greater privacy protection than the federal privacy law, the parties must conform to the higher privacy provisions under state law.

The membership of the North Dakota HIPAA Coalition includes representation from government agencies, associations representing health care providers, individual hospitals and clinics, and health insurers. A representative of the Attorney General's office reported that based on the analysis of the results once the evaluation of state medical privacy laws is completed, the Attorney General would propose to the 58th Legislative Assembly any necessary bill for the state to comply with the federal privacy law.

In addition to receiving testimony from interested persons regarding federal privacy law implementation

efforts and receiving updates on the status of the North Dakota HIPAA Coalition's review of the state's medical privacy laws, the committee received testimony regarding medical privacy issues that may arise in the case of a pharmacy that maintains at the check-out counter a customer log of prescriptions that have been picked up, and the committee received testimony regarding medical privacy choice-of-law issues that could arise based on the residency of a patient and the location of a medical provider.

The committee received testimony that questions of how the federal Health Insurance Portability and Accountability Act and state privacy laws impact the care of nonresident patients relate to conflicts-of-law matters or choice-of-law matters. The federal Health Insurance Portability and Accountability Act regulations regarding preemption of state law do not directly address the issue of which state's law may apply. Some health care facilities follow the practice that the privacy laws of the place in which the health care facility is located determine the medical privacy rights of the patient; however, it is possible that some health care providers may choose to protect the confidentiality of medical information based on the law of the state in which the patient resides. A representative of the Attorney General's office stated it would be helpful to have federal clarification regarding which state's privacy laws would apply in the case of a resident of one state receiving medical care in a different state.

Medical Privacy Conclusion

The committee makes no recommendation with respect to the medical privacy portion of its study of privacy.

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.

Committee members were Senators Aaron Krauter (Chairman), Bill Bowman, Randel Christmann, Thomas Fischer, Joel C. Heitkamp, Bob Stenehjem, and Terry M. Wanzek and Representatives Wesley R. Belter, LeRoy G. Bernstein, Merle Boucher, Pam Guleson, David Monson, Eugene Nicholas, and Earl Rennerfeldt.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2002. The Council accepted the report for submission to the 58th 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 would provide water for the restoration of the Devils Lake chain.

A number of concerns 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 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 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 A. 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 money received and payments made to the United States for the water supply program.

On November 19, 1986, the United States and the Garrison Diversion Conservancy District entered 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 appropriated \$758,478,000 and expended \$696,506,177 for the Garrison Diversion Unit Project. The President requested \$25.239 million for the Garrison Diversion Unit in his budget request, the Senate version contains \$28.577 million and the House of Representatives version contains \$27.239 million. The final budget amount will be resolved in conference committee. The funding history of the Garrison Diversion Unit is summarized in the following table:

Garrison Diversion Unit Funding History		
Fiscal Year	Appropriated	Expended
1966	\$500,000	\$499,213
1967	2,000,000	1,789,188
1968	4,000,000	2,572,003
1969	5,472,000	4,728,905
1970	6,650,000	7,229,029
1971	12,100,000	9,293,753
1972	11,390,000	11,910,300
1973	20,400,000	17,564,886
1974	17,390,000	13,648,078
1975	13,855,000	14,739,635
1976	11,900,000	15,970,264
1976	2,700,000	4,113,333
1977	23,500,000	14,561,749
1978	18,600,000	9,674,539
1979	0	7,370,922
1980	9,700,000	10,685,735
1981	0	4,715,993
1982	4,000,000	6,424,060
1983	4,000,000	26,440,138
1984	22,330,000	23,915,389
1985	53,580,000	15,493,771
1986	41,300,000	29,873,663
1987	33,000,000	30,351,129
1988	33,000,000	40,440,282
1989	30,000,000	35,217,532
1990	26,580,000	26,993,534
1991	35,000,000	38,328,655
1992	33,000,000	34,702,630
1993	30,000,000	29,632,234
1994	32,000,000	28,580,366
1995	32,000,000	28,598,273
1996	24,900,000	20,317,708
1997	21,600,000	21,744,789
1998	25,900,000	21,922,758
1999	22,700,000	21,999,100
2000	23,494,000	23,157,422
2001	21,416,000	18,865,219
2002	24,000,000	22,440,000
2003	25,239,000*	
Total	\$759,196,000	\$696,506,177

*Executive budget request.

NOTE: These amounts exclude federal expenditures for the \$759,196,000 operation, maintenance, and replacement of the Jamestown Reservoir and for Indian municipal, rural, and industrial water supply 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 Dakota Water Resources Act increases the ceiling for the municipal, rural, and industrial water supply program by \$200 million and provides an additional \$200 million for the tribal municipal, rural, and industrial water supply program. The state has received \$180.3 million in federal grant funds through fiscal year 2002. Projects funded under the municipal, rural, and industrial water supply program are funded using 65 percent federal grant money and 35 percent nonfederal money. The operation, maintenance, and replacement costs for water systems are 100 percent nonfederal costs. The Southwest Pipeline Project has received \$69.6 million, the Northwest Area Water Supply Project has received \$11.9 million, and other projects have received \$98.8 million.

The committee received information that state municipal, rural, and industrial water supply funding is lower than in past years. Typically the state receives approximately \$10 million per year, but only \$5 million is expected to be available in fiscal year 2003. The State Water Commission budget, as presented to the 57th Legislative Assembly, included a tentative allocation of \$15 million for accelerating municipal, rural, and industrial water supply projects. The State Water Commission approved four municipal, rural, and industrial water supply projects--McKenzie rural water system, Ramsey rural water system, Langdon rural water system, and Tri-County rural water system. The Ramsey rural water system is under construction, the Langdon and Tri-County water systems will begin construction this fall, and the McKenzie rural water system is scheduled to open bids this winter.

Southwest Pipeline Project

House Bill No. 1023, enacted by the 57th Legislative Assembly, provided \$7.3 million in funding for the Southwest Pipeline Project from the water development trust fund for the 2001-03 biennium. This funding allowed the State Water Commission to expand the Southwest Pipeline Project into what is known as the Bowman-Scranton phase of the project. This phase will serve the city of Scranton and approximately 250 rural users. Once this phase is completed it will complete the south and east portion of the Southwest Pipeline Project, leaving only the Medora-Beach phase of the original project yet to be constructed. Mercer and Oliver Counties have also contracted for water from the Southwest Pipeline Project.

The City of Medora contracted with the State Water Commission on March 23, 1983, to purchase 13 million gallons of water per year at a rate not to exceed 40.3 gallons per minute from the Southwest Pipeline Project. On January 15, 2002, the Medora city council passed a motion to amend the water services contract to provide that the Southwest Pipeline Project be its sole source of water supply under the contract rather than the agreed purchase of a minimum of 13 million gallons of

water annually. An initiative petition proposing an ordinance "rejecting contracts with and water from the Southwest Water Pipeline" was filed January 18, 2002, and passed by a vote of the electors June 11, 2002, in accordance with Medora's home rule charter. The State Water Commission expressed concern that if the ordinance was valid, the commission would have to address the issue of the existing water services contract. The Attorney General has since issued an opinion that the initiated city ordinance violated the constitutional prohibitions on impairment of contracts, and is therefore void.

The Southwest Pipeline Project provides water to 22 communities and approximately 1,850 rural water connections. In addition, there are nine businesses or other bulk users being served by the project. The total population presently served is approximately 30,000.

Northwest Area Water Supply Project

Representatives of the State Water Commission reported that the Northwest Area Water Supply Project received final authorization to begin construction on March 28, 2002. Bids for a 7.5-mile pipeline segment had been advertised in December 2001 and a groundbreaking ceremony was held on April 5, 2002, in Minot. Representatives of the State Water Commission reported that the state has taken many precautions with the Northwest Area Water Supply Project to ensure that Missouri River biota is not transferred to Canada. The water will first be pretreated near Lake Sakakawea to disinfect the water. The water will then be transferred through a pipeline to the Minot treatment plant for final treatment. As a final precaution, the water will be treated using ultraviolet radiation. Construction on the first Northwest Area Water Supply main transmission contract is underway. The contractor has completed construction of approximately three miles of the 7.5 miles of pipeline. The contractor has reached the outskirts of Minot and the pace of construction will increase as the number of underground utilities diminishes, and the contractor no longer has to deal with working in paved areas. This contract has a cost of approximately \$4.8 million and has a completion date of November 1, 2002. The State Water Commission is considering three Lake Sakakawea intake locations, all near the Snake Creek Pumping Plant. Representatives of the State Water Commission reported that funding is the greatest obstacle to the project at this time. Federal municipal, rural, and industrial water supply funding is less than in the recent past which will lengthen the time to deliver water. The goal is to deliver water to Minot by late 2006, which will require approximately \$6 million of federal funds annually.

On October 22, 2002, subsequent to the final meeting of the committee, the Province of Manitoba filed suit in the United States District Court for the District of Columbia seeking to halt construction of the Northwest Area Water Supply Project and to require the Department of the Interior to conduct a more thorough environmental impact study for the project. The province objects to the project because it contends that water to

be taken from Lake Sakakawea is not being treated sufficiently to prevent the transfer of biota into the Hudson Bay watershed via the Souris River Basin.

Bureau of Reclamation Activities

Representatives of the Bureau of Reclamation reported on bureau activities. The reports included information on the operation and maintenance of the principal supply works; the Oakes Test Area; the municipal, rural, and industrial water supply program; fish and wildlife mitigation and enhancement; the natural resources trust; the municipal, rural, and industrial Indian grant program; the Standing Rock irrigation project; the recreation component of the Garrison Diversion Unit; and the undesignated 28,000 acres of irrigation. The Snake Creek Pumping Plant began pumping operations in 2002 following the spring thaw on Audubon Lake. Additional pumping was performed throughout the summer to maintain a water elevation of 1847.0 feet mean sea level. The conduit between Audubon Lake and Lake Sakakawea was opened in October 2001 to allow for a slow drawdown of Audubon Lake to elevation 1845.0 feet mean sea level. In addition to the routine operation and maintenance of the Snake Creek Pumping Plant, problems with the concrete deck were identified and studied. A plan is being drafted to monitor the rate of deterioration. Routine operation and maintenance of the McClusky and New Rockford Canals continued under a cooperative agreement with the Garrison Diversion Conservancy District.

Operation and maintenance of the Oakes Test Area is also covered under the cooperative agreement with the Garrison Diversion Conservancy District. The Bureau of Reclamation covers most of the contractual and coordination responsibilities while the conservancy district handles the routine operation and maintenance of the facilities. In 2002 the Bureau of Reclamation issued 13 water service contracts totaling 3,698.6 acres and one water exchange contract for 130.8 acres. Water deliveries are in accordance with the Oakes Test Area operating principles. Irrigation and water demands were met using a combination of surplus James River flows early in the season and releases from the conservation pool at Jamestown Reservoir later in the season.

The wildlife habitat mitigation and enhancement plan consists of three general parts. The wildlife mitigation lands, Lonetree Wildlife Management area, and the Kraft Slough area. The wildlife mitigation lands include the original wildlife tracts acquired under the 1965 plan, lands approximate to the canals acquired in excess of project needs, and scattered wildlife tracts. The plan states that mitigation for project-related impacts be implemented prior to impacts to resources, concurrent with construction, on an acre-for-acre basis, replacing lost lands with their ecological equivalent as determined by the type of wildlife use and equivalent vegetative cover. The objective of the plan is to ensure there will be no net wildlife habitat lost due to the project. Emphasis was placed on acquisition of restorable drained wetland tracts. The Bureau of Reclamation retains a policy of

acquiring lands for wildlife purposes from willing sellers to the extent possible. The Bureau of Reclamation acquired 28 tracts totaling approximately 12,700 acres from willing sellers to be developed as mitigation for wildlife habitat impacts associated with the construction of the Garrison Diversion Unit. Willing seller tracts plus the original wildlife lands total approximately 22,120 acres. The lands were developed for wildlife purposes by the Bureau of Reclamation. Development activities include removal of abandoned buildings and trash piles, restoration of drained wetlands, conversion of croplands to native or tame grasses, tree plantings, and construction of boundary fences. Once the tracts are fully developed by the Bureau of Reclamation, the individual tracts are transferred to the United States Fish and Wildlife Service for management. Management of five tracts totaling approximately 2,430 acres is performed by the North Dakota Game and Fish Department by agreement with the Bureau of Reclamation and the United States Fish and Wildlife Service.

In 1969 the Bureau of Reclamation began acquisition of land from willing sellers for the Lonetree Reservoir. The reservoir area contains 32,331.51 acres acquired in fee title from willing sellers, and 830.94 acres that are considered meandered for a total of 33,162.45 acres. The Garrison Diversion Unit Reformulation Act of 1986 directed the Secretary of the Interior to develop the area for wildlife purposes to be managed by the Game and Fish Department. The Dakota Water Resources Act deauthorized Lonetree Reservoir and established permanently its use as a wildlife enhancement area to be managed by the state. The Sheyenne Lake National Wildlife Refuge is contained within the Lonetree Wildlife Management area and makes up 797.3 acres, of which 333.85 acres are upland and 463.45 acres are water. In 1999 and 2000 three tracts totaling 280 acres were purchased as part of mitigation for impacts to the Audubon Game Management area and are marked and managed as part of the Lonetree Wildlife Management area but receive different operation and maintenance payments.

The original plan was to develop the Lonetree Wildlife Management area in five sections and turn management over to the Game and Fish Department as they were developed, with the first transfer of 11,400 acres to take place October 1, 1989, and the final transfer around 1995. Due to complications with the requirement that the Game and Fish Department pay taxes on all its lands, transfer was delayed. While the Lonetree Wildlife Management area was being developed, the land was leased to previous landowners for agricultural purposes. This practice ended on December 31, 1992, when all agricultural leases were terminated. The Lonetree Wildlife Management area development was, for the most part, completed and transferred to the Game and Fish Department for management on January 1, 1997. Development included moving landowners; removing all farm buildings, fences, and utilities; plugging wells; and burying rockpiles. The Bureau of Reclamation constructed new boundary fences, seeded grass, planted trees, restored all drained wetlands, constructed

three vault toilets at the campgrounds, constructed 11 parking lots, and reclaimed the Lonetree Dam site. Construction of the management headquarters began in 1990 with the erection of a cold storage building. In 1991 the assistant manager's modular home was moved onsite, and the manager's house was built in 1992. The shop-dormitory and office buildings were constructed in 1993. In 1994 a seed storage building was constructed, and a chemical storage building was constructed in 2001.

The Game and Fish Department uses prescribed burning to manage 1,500 acres annually and sprays up to 3,000 acres of grasslands to control noxious weeds, grazes 200 acres of grass, and hays 1,200 acres of grass as part of its grassland management activities. The department receives an annual operation and maintenance payment of \$19.76 per acre for a total of \$655,290 plus administrative costs and capital expenditures to manage the Lonetree Wildlife Management area. The department has never requested additional funds to cover administrative costs and capital expenditures. The operation and maintenance payment is based on the average cost per acre of managing a wildlife area in 1982, and was last adjusted in 1987, and is indexed based on the annual rate of inflation. The Dakota Water Resources Act establishes that all development and operation and maintenance costs associated with the Lonetree Wildlife Management area be nonreimbursable.

Representatives of the Bureau of Reclamation also reported on refuge compatibility of the Audubon and Arrowwood National Wildlife Refuges. The Arrowwood National Wildlife Refuge lies directly upstream of Jamestown Reservoir, a Garrison Diversion Unit feature and is adversely impacted by reservoir operations. The Arrowwood refuge compatibility project involves construction of a series of bypass channels and subimpoundments to improve water management capability at the refuge as mitigation for impacts caused by the operation of Jamestown Reservoir. The contract for construction of the Jim Lake drawdown channel was completed in 1992. Work is continuing on the Jim Lake bypass channel with a scheduled completion date of April 13, 2003. The contractor has constructed approximately 4.3 miles of the channel embankment in Jim Lake. The contractor has also constructed the 1.1-mile subimpoundment dike embankment. The total project calls for earth work and construction of 4.4 miles of bypass channel and embankment, 1.1 miles of subimpoundment embankment, .8 mile of subimpoundment bypass channel, and three control structures. The contractor is 76 percent complete in 71 percent of the time. Design work is continuing on the 5.5-mile Arrowwood Lake drawdown channel, which will be the next phase of the overall project.

In 1975 the Bureau of Reclamation raised the water level in Audubon Lake approximately 13 feet. The increased water level resulted in a loss of islands and upland habitat adjacent to the lake. In addition wetland habitat in and adjacent to the lake was decreased, and erosion of remaining islands was accelerated. The

Audubon refuge compatibility program is designed to mitigate for these impacts to the Audubon National Wildlife Refuge and the Audubon Wildlife Management area. Although no island stabilization work was performed in fiscal year 2002, two additional one-acre islands were constructed. The 17-acre Shaffer Marsh wetland mitigation project was completed in December 2001. The out-of-kind mitigation, which exchanges wetland sites for peninsula cutoffs, will commence with the scheduled October 2002 construction of the 15-acre Meyers Pond project. Construction of five off-refuge islands is scheduled for this winter. The Bureau of Reclamation has purchased 2,608 acres of land for management by the Game and Fish Department as mitigation for Audubon Wildlife Management area impacts. Acquisition of approximately 160 acres remains to complete the bureau's mitigation requirement for the Audubon Wildlife Management area. The Bureau of Reclamation is developing a cooperative agreement with the Game and Fish Department for management of these tracts.

Representatives of the Bureau of Reclamation also reported on the Kraft Slough National Wildlife Refuge. Kraft Slough was originally the site for the Taayer Reservoir under the 1965 Garrison Diversion Unit plan. However, the Garrison Diversion Unit Reformulation Act of 1986 deauthorized the Taayer Reservoir. The Reformulation Act also directed the Secretary of the Interior to acquire up to 5,000 acres at the Kraft and Pickell Sloughs area to be managed by the United States Fish and Wildlife Service as a component of the National Wildlife Refuge System giving consideration to the unique wildlife values of the area.

The acquisition and development plan for the Kraft Slough National Wildlife Refuge and the Kraft Slough environmental assessment were completed by the Bureau of Reclamation in March 1991. Since that time the Bureau of Reclamation has been negotiating with area landowners for fee title acquisition of land on a willing seller basis. The Bureau of Reclamation holds title to 1,700 acres at Kraft Slough of which 1,520 acres were acquired from willing sellers and 480 acres were withdrawn from the Bureau of Land Management. Acquired lands are comprised of wetlands, native prairie, and agricultural lands. The Bureau of Reclamation has worked with adjacent farmers to seed 595 acres of cropland to native grasses. Old fences, trash piles, and two abandoned farmsteads have been removed. The Bureau of Reclamation has an aggressive program to control Russian olive and noxious weeds such as leafy spurge and Canada thistle on the area. The Dakota Water Resources Act authorized the Secretary of the Interior to trade acquired lands at Kraft Slough with adjacent landowners for property that complements the area. In fiscal year 2003 the Bureau of Reclamation will be working with the United States Fish and Wildlife Service to write a management plan for Kraft Slough with the intent of transferring acquired lands to the Fish and Wildlife Service to be managed as a component of the National Wildlife Refuge System.

Representatives of the Bureau of Reclamation also reported on the status of the North Dakota Wetlands Trust. The North Dakota Wetlands Trust was established pursuant to the Garrison Diversion Unit Reformulation Act of 1986. The purpose of the trust was to preserve, enhance, restore, and manage wetlands and associated wildlife habitat in the state. Originally under the Act the trust was given \$12 million in funds from the Bureau of Reclamation's appropriations for the Garrison Diversion Unit and \$1.2 million in state funds. These funds were placed in an account and the interest is being used on an ongoing basis to carry out the purposes of the trust. The financial commitment was met by the Bureau of Reclamation January 1996, and all \$12 million has been paid to the trust. The trust funds a variety of projects, including educational projects; wetland restorations, enhancements, and creations; no-till drills and zero tillage workshops; the adopt a pothole program; the Prairie Wetland Interpretive Center; and land acquisition.

The Dakota Water Resources Act changed the name of the Wetlands Trust to the Natural Resources Trust. The change involved adding grassland conservation and riparian restoration to its mission of preserving, enhancing, restoring, and managing wetlands and associated wildlife habitat in the state. In addition to having authority to acquire land, interests in land, and water rights, the trust has the power to finance wetland preservation, enhancement, restoration, and management of wetland habitat programs. Additionally the trust now has the power to fund incentives for conservation practices by landowners. Representatives of the Bureau of Reclamation reported that the bureau has prepared and executed a new agreement with the trust. Funding of the trust has been reestablished under this agreement. The amount of the contribution for each year is equal to 5 percent of the total amount appropriated for the Red River Valley and the state municipal, rural, and industrial water supply programs. In fiscal year 2002 the bureau's contribution to the trust was \$350,000.

Representatives of the Bureau of Reclamation also reported on the municipal, rural, and industrial Indian grant program. The Standing Rock Sioux Tribe, Spirit Lake Nation, and the Three Affiliated Tribes continue to work toward completion of final engineering reports for their reservation-wide rural water systems. The Three Affiliated Tribes has completed a draft report that is currently under review by the Bureau of Reclamation. Reports were expected from the Spirit Lake Nation and Standing Rock Sioux Tribe by the end of September 2002. The Bureau of Reclamation is also working with the tribes to complete their environmental assessments. The Turtle Mountain Band of Chippewa continues to work toward completion of its needs assessment and expects to begin work on a final engineering report in fiscal year 2003. The environmental assessment has been completed for the Standing Rock irrigation project and a finding of no significant impact is being prepared. The Bureau of Reclamation has reached an agreement with the Standing Rock Sioux Tribe on a schedule and list of activities to complete which will allow construction

of the Cannonball Unit in 2003. The tribe has obtained the necessary farm leases in the Cannonball Unit. Final design work for the Cannonball Unit, approximately 700 acres, is scheduled to be completed by November of this year which will allow the tribe to obtain right-of-way easements and conduct cultural resource investigations for construction of the facilities. However, the tribe estimates it only has sufficient funds to construct approximately 1,800 acres and will be seeking indexing of the project or an increase in the funds authorized for this project.

Concerning the recreation component, representatives of the Bureau of Reclamation reported that total funding for the Garrison Diversion Unit recreation program was \$13 million under the 1986 Garrison Diversion Unit Reformulation Act, half of which was to be provided by the Garrison Diversion Conservancy District and half by the Bureau of Reclamation. Although many projects are complete, the funding ceiling was no longer sufficient to complete the entire program as originally proposed. The Dakota Water Resources Act raised the recreation program funding ceiling. The Garrison Diversion Conservancy District and the Bureau of Reclamation along with the state Parks and Recreation Department are reviewing the recreation program and developing a plan that is cost-effective and provides the greatest public benefit within existing authorities and the new funding ceiling. The Bureau of Reclamation is preparing a resource management plan and environmental assessment for the McClusky and New Rockford Canals right of ways. The intent of this plan is to identify opportunities to improve recreational use of facilities on the canal right of ways and the chain-of-lakes without interfering with the authorized purposes of the canals.

The Dakota Water Resources Act authorized 75,480 acres of irrigation, of which 28,000 acres were not designated to be developed in specific areas. Two irrigation districts have been formed, the Nesson Valley and the Elk/Charbon irrigation districts, and been approved to be developed, 10,000 acres maximum, as part of the 28,000 acres. The Bureau of Reclamation reported that it has received inquiries from the Horsehead Flats irrigation area, 10,000 to 15,000 acres south of Bismarck, and the Big Bend irrigation area, up to 24,000 acres north of Bismarck, to become part of the remaining undesignated acres. Both areas are currently in the process of forming irrigation districts. All four projects being proposed will be privately funded and constructed but will request federal power for irrigation pumping from the Missouri River.

Representatives of the Bureau of Reclamation reported that at the request of the state and irrigation districts, the bureau is investigating the Nesson Valley and Elk/Charbon irrigation district areas to determine project feasibility, which includes soils classification, drainage and toxic elements investigations, and economic feasibility investigations. Appropriate studies include the bureau's requirements under the National Environmental Policy Act, and contracts will be negotiated providing for the repayment of appropriate assigned costs for power along with the requirements of

reclamation law. These projects are eligible for project power, provided the Secretary of the Interior determines the projects are feasible under the terms of the Dakota Water Resources Act. A team has been formed with representatives of the irrigation districts, the State Water Commission, the Garrison Diversion Conservancy District, the North Dakota Irrigation Caucus, and the Bureau of Reclamation to oversee the process and to complete the necessary tasks leading to providing federal pumping power to the irrigation districts.

RECENT DEVELOPMENTS

Dakota Water Resources Act

The Dakota Water Resources Act of 2000 amends 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 Act 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 the state. The Act completes the Garrison Diversion Unit Project, while enhancing wildlife habitat and water conservation in North Dakota.

Section 2 of the Act establishes the purposes of the Garrison Diversion Unit Project and adds wildlife enhancement and streamflow augmentation and ground water recharge to the purposes of the Garrison Diversion Unit Reformulation Act of 1986. It provides that the project will be a joint effort between the Secretary of the Interior and the state. It also provides for repayment of appropriate costs, including operation and maintenance costs. It assures compliance with the Boundary Waters Treaty of 1909 by requiring the Secretary of the Interior to determine compliance will be achieved before construction of any features conveying water into the Hudson Bay drainage may begin.

Section 3 of the Act authorizes specific recreation and fish and wildlife enhancement facilities and determines responsibility for the costs of mitigation and enhancement facilities. It authorizes the Bureau of Reclamation to exchange land in order to complete the development of the Kraft Slough Wildlife Refuge. It also deauthorizes Lonetree Dam and Reservoirs as a water supply feature and permanently designates it as a wildlife conservation area. It provides an additional \$6.5 million in funding authority for federal recreation programs, with a 50 percent federal cost share.

Section 4 of the Act establishes the process for determining the interest rate for authorized features of the project during construction. It also allows the Secretary of the Interior to declare the facilities complete before they are used for the actual delivery of water.

Section 5 of the Act authorizes 73,100 acres of irrigation on Indian and non-Indian land, none of which will be

located in the Hudson Bay or Devils Lake Basins. The funding for development of the non-Indian systems is not included or anticipated. The federal support of the irrigation areas is limited to providing power from the Pick-Sloan Missouri Basin power system. Twenty-eight thousand acres are undesignated, but before those acres can receive federal power, the Secretary of the Interior must prepare a detailed report on the irrigation units proposed and include a finding of their economic, financial, and engineering feasibility.

Section 6 of the Act provides that Pick-Sloan power may be used for the municipal, rural, and industrial water supply systems and irrigation areas. It also freezes current cost allocations associated with the Pick-Sloan Missouri Basin power program.

Section 7 of the Act authorizes continued development of Indian and non-Indian municipal, rural, and industrial water supply systems. It retains a 25 percent nonfederal cost share and authorizes an incentive-based water conservation program. It also provides for an optional revolving loan program.

Section 8 of the Act authorizes a comprehensive environmental analysis and study to determine the best method or methods to meet current and future Red River Valley water supply needs. No features to transfer Missouri River water, as a solution to the needs of the Red River Valley, may be constructed without further authorization from Congress. In-basin solutions may be constructed without further congressional authorization.

Section 9 of the Act authorizes the Secretary of the Interior to negotiate a mutually acceptable agreement for the transfer of the Oakes Test Area facilities to the state. If no agreement is reached, the Secretary of the Interior is authorized to dispose of the Oakes Test Area.

Section 10 of the Act authorizes \$200 million to complete facilities to meet Red River Valley water supply needs, \$200 million for the state municipal, rural, and industrial water supply program, \$200 million for the Indian municipal, rural, and industrial water supply program, \$6.5 million for the recreation program, and \$25 million for the Natural Resources Trust.

Section 11 of the Act authorizes \$25 million for the Natural Resources Trust, formerly the North Dakota Wetlands Trust. It authorizes the establishment of an operation and maintenance account and expands its purposes to include grasslands and riparian habitat.

Garrison Diversion Draft Reassessment Report

Representatives of the Garrison Diversion Conservancy District presented a draft reassessment report to the committee. Representatives of the conservancy district reported that the district has undertaken a strategic planning initiative to examine the future of the district and reassess its programs in light of the activities of others and the recently enacted Dakota Water Resources Act. The Garrison Diversion Conservancy District Board of Directors addressed four main areas of responsibility: agriculture and natural resources; Red River Valley water supply studies; municipal, rural, and industrial water supply; and recreation. The board

suggested 25 initiatives for consideration. The board of directors committed itself to support these initiatives and the new direction that the Garrison Diversion Unit Project may take as a result of their implementation. The seven initiatives reflecting the Garrison Diversion district's commitment to supporting the state's character as a setting for healthy agriculture, business, and wildlife are to develop and enhance irrigation programs in North Dakota, support irrigation on Indian reservation land, access project pumping power for North Dakota use, seek out partnerships designed to enhance wildlife habitat, create a long-term operation plan for the Oakes Test Area, support alternative and increased funding of research in irrigated agriculture, and to take a more active role in support of integrated water management programs. The three initiatives relating to the Red River Valley study are to renegotiate the management agreement on the Red River Valley study, reconsider specific elements of the Red River Valley study, and to help develop an official state position on water needs for the Red River Valley. The five initiatives relating to municipal, rural, and industrial water supplies include planning for the distribution of non-Indian municipal, rural, and industrial water supply allocations; planning for the distribution of Indian municipal, rural, and industrial water supply allocations; continuing to serve as the repayment, construction, and operating entity for facilities associated with wholesale water supply as the district has in the past with the features of the Garrison Diversion Unit; developing a statewide analysis of water needs; and assessing opportunities to make use of a larger variety of federal programs to aid in the solution of water problems. The five initiatives identified in the recreation area of responsibility are to plan for the future growth of nature-based tourism in North Dakota, review Garrison Diversion Conservancy District recreation criteria for funding, develop a working agreement with the Division of Tourism and the Parks and Recreation Department on statewide tourism recreation planning, pursue opportunities for a more active relationship with the North Dakota Natural Resources Trust, and provide a program of education that promotes North Dakota resources. The five initiatives identified with administrative and legislative considerations are to plan for budget changes that reflect an increased level of activity, plan for changes in staffing and support services, plan for statewide responsibilities and a growing role in state water management, consider how changes in state statutes might help pave the way for the district's changing role, and explore further improvements to the Dakota Water Resources Act to reflect the changing needs of North Dakota and the growing understanding of the impact of federal legislation.

Red River Valley Water Supply Study

The Dakota Water Resources Act calls for a study to determine the water needs of the Red River Valley and a thorough environmental impact study of all the proposed solutions. The Bureau of Reclamation, the State Water Commission, and the Garrison Diversion Conservancy

District are managing the study and have agreed to involve federal, state, and international interests and take advantage of the wide variety of resources available to each party in this diverse group. A technical team consisting of representatives from state, federal, Canadian, environmental, and local agencies is expected to review the various elements of the study as it progresses. The three-year project is expected to consist of four overlapping studies culminating in a proposed solution for the water needs in the Red River Valley and an environmental impact study to affirm the proposed solution's appropriateness to the ecosystem of the Red River Valley. These include a hydrological study, an engineering study, an environmental study, and a needs assessment study. The goal is to offer a final, comprehensive, complete, long-term, environmentally friendly, functional, and efficient water management and delivery solution to the people of the Upper Great Plains.

The Bureau of Reclamation and the Garrison Diversion Conservancy District have agreed to terms included in three agreements, a memorandum of understanding for the Red River Valley Water Supply Project environmental impact statement, a master cooperative agreement for the Dakota Water Resources Act, and a cooperative agreement for the Red River Valley Water Supply Project. The memorandum of understanding establishes the Bureau of Reclamation and the conservancy district as co-lead agencies to jointly prepare the environmental impact statement. The cooperative agreements provide a means to fund activities of the conservancy district associated with assisting the Bureau of Reclamation in activities authorized under the Dakota Water Resources Act.

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 10,000 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 and current level of 1,447.2 feet mean sea level. At this elevation the lake has a surface area of 125,000 acres and is storing 2.45 million acre-feet of water. The State Engineer reported that Devils Lake continues to flow east through the Jerusalem Channel into Stump Lake. Currently, approximately 20 cubic feet per second is being measured by the United States Geological Survey's gauge. Stump Lake has risen 1.5 feet since May 1, 2002, and the current elevation of Stump Lake is 1,413.6 feet mean sea level. The State Engineer reported that the State Water Commission

continues to pursue both the federal and state outlets for Devils Lake but the federal outlet has had an unexpected delay. On August 12, 2002, the Governor was notified that the United States Army Corps of Engineers has delayed its recommendations regarding the permanent outlet until January 2003. After that the outlet project will be forwarded to the International Joint Commission for review, which is estimated to require 6 to 12 months. The result of this development is that the spring of 2004 will be the earliest construction could begin on the federal outlet. In addition Senator Kent Conrad announced in August 2002 that he no longer has confidence that the United States Army Corps of Engineers will build the federal outlet and has provided his support for the state outlet. As a result of these actions the State Water Commission at its meeting on August 15, 2002, approved moving forward with the state outlet by completing the design and bidding the grading of the Round Lake Pumping Plant site. The current estimated cost of the state outlet project is \$25 million for a 100 cubic feet per second outlet.

Devils Lake Litigation

The Attorney General provided updates concerning litigation involving the ownership of the Devils Lake lakebed, *Spirit Lake Tribe v. State of North Dakota, United States of America, et al.* The Attorney General reported that litigation over title to Devils Lake has been ongoing for nearly 20 years. In 1986 the Spirit Lake Tribe, then known as the Devils Lake Sioux Tribe, sued the state, the United States, and several private landowners seeking title to Devils Lake. The basis for the tribe's claim is the 1867 treaty creating its reservation. The treaty defines the northern boundary of the reservation as "along the waters" of the lake. If "along the waters" means the lake's north shore then Devils Lake is within the reservation's boundaries. If the phrase means the south shore then the lake is outside the reservation.

The tribe asserts that "along the waters" means the north shore. The defendants, private landowners who farmed and ranched the dry lakebed for decades, the state of North Dakota (which has exercised jurisdiction over the lake and lakebed), and the United States (which holds title to much of the lakebed under a 1971 state deed) assert that "along the waters" means the lake's south shore. The state also asserts that it took title of Devils Lake at statehood under the equal footing doctrine, a doctrine that gives title to navigable bodies of water to the states as they enter the Union.

In 1989 the federal district judge dismissed the suit on a summary judgment motion, ruling that the tribe was paid for the lake in a 1977 settlement of its aboriginal land claim action that it had brought before the Indian Claims Commission. Having been paid for the lake once, the federal judge ruled that the tribe could not sue for it again. The United States Court of Appeals for the Eighth Circuit reversed, saying that factual questions precluded summary judgment and that a trial needed to be held to fully develop the facts.

What followed was a long period of on-again, off-again negotiations by which the state and tribe tried to negotiate a settlement. A final agreement was not reached, so the litigation was reactivated.

The United States, relying on a statute requiring that property actions against it be brought within 12 years, filed a motion in which it argued that the suit against it must be dismissed because the tribe had not sued in time. The state supported the motion and also filed a motion asking that the court declare Devils Lake navigable.

In December 1999 the federal judge granted the state's motion and declared the lake navigable. The federal judge also granted the United States' motion and dismissed the United States from the suit because of the tribe's failure to sue within 12 years. The federal judge stated that long-standing use of the lake and lakebed by the United States, the state, local governments, and non-Indian farmers and ranchers put the tribe on notice of the United States' adverse claim.

After dismissing the suit against the United States, the federal judge then dismissed it against the state and private landowners. The judge ruled that the United States is an indispensable party to litigation interpreting the treaty. Because the United States has been dismissed, the suit against all the other defendants must also be dismissed. The tribe then appealed. On August 17, 2001, a three-member panel of the United States Court of Appeals for the Eighth Circuit affirmed the district judge's decision. The panel agreed that before 1974, the tribe had notice of adverse claims to the lake and, therefore, filing its complaint in 1986 was outside the 12-year statute of limitations. One judge dissented, arguing that the tribe did not have notice of the United States' adverse claim until the early 1980s.

On September 26, 2001, the tribe filed a petition for rehearing with the Court of Appeals asking that the entire court rehear the case. The state filed a reply petition and the court denied the petition for rehearing. The tribe then filed a petition with the United States Supreme Court seeking a writ of certiorari. The state responded and the United States Supreme Court subsequently denied the petition seeking a writ of certiorari. The tribe has since approached the Governor and requested that the Governor enter negotiations with the tribe to resolve its claim and this longstanding tribal-state dispute.

Section 404 Program

Section 404 of the Federal Water Pollution Control Act [33 U.S.C. 1344], commonly known as the Clean Water Act, 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 effective date was repealed by 2001 Senate Bill No. 2285 which also appropriated \$800,000 to the State Water Commission for the purpose of assuming jurisdiction over and administering the Section 404 program of the Clean Water Act. However, Senate Bill No. 2285 does not become effective until the State Engineer certifies to the Governor that a program has been designed to effectively assume responsibility for the Section 404 program of the Clean Water Act, and the State Water Commission is ready to assume those responsibilities.

Representatives of the State Water Commission reported that staff members have met with representatives of the Environmental Protection Agency and the Solicitor General's office concerning assumption of the Section 404 program. One of the primary points of discussion during the meeting with the Environmental Protection Agency was the option of implementing a state wetland regulatory program as an interim step toward assumption of the Section 404 program. Under this option, the United States Army Corps of Engineers would continue to administer the Section 404 program during the interim period. The Environmental Protection Agency noted that only two states--Michigan and New Jersey--have successfully assumed the Section 404 program, and both had state wetland regulatory programs in place before submitting a complete application for assumption of the federal program. Representatives of the State Water Commission reported that Oregon is working toward assumption, and that state has also implemented a state wetland regulatory program. While running a concurrent state wetland regulatory program as an interim step toward assumption is not a specific requirement within the federal regulations, Environmental Protection Agency representatives have indicated that it would facilitate approval of state assumption by providing an opportunity for development of a track record and an opportunity for the state to better define the resources required to successfully operate a Section 404 program. Draft administrative rules have been distributed for review and comments from other state and federal agencies, including the Environmental Protection Agency. When the comments have been received, the State Water Commission intends to proceed with the rule adoption process. Members of the committee expressed concern, however, that it was not the intent of the Legislative Assembly that the State Water Commission administer a wetland regulatory program in tandem with

the Section 404 permit program, and if the Environmental Protection Agency is insisting the state do so in order to gain approval for assumption of the Section 404 program, the state may reassess the assumption.

Missouri River Issues

Representatives of the State Water Commission provided updates concerning Missouri River issues and revision of the 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 United States Army 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.

Representatives of the State Water Commission reported that drought conditions persist in the Missouri River Basin. On July 31, 2002, system storage in the six main stem reservoirs was 48.3 million acre-feet, or 13.5 million acre-feet below the average system storage for that day. Lake Sakakawea was at an elevation of 1,831.4 feet mean sea level, 11.7 feet below its average end of July elevation. The elevation of Lake Oahe was 1,590.8 feet mean sea level on July 31, 2002, 17 feet lower than its average end of July elevation.

In April 2002 the state of South Dakota filed suit against the Corps of Engineers requesting the federal

district court to issue a restraining order preventing Lake Oahe from being drawn down during the smelt spawn. The court granted South Dakota's request and enjoined the corps from lowering the water level of Lake Oahe. To make up for water released from Lake Oahe, the corps increased releases from Lake Sakakawea and from Fort Peck Lake. North Dakota filed suit to prevent loss of the smelt spawn in Lake Sakakawea. Montana then followed suit to protect Fort Peck Lake. A federal district court in Nebraska then issued an injunction requiring the corps to operate the system in accordance with the current *Master Manual* and to maintain navigation on the lower river. Although the spawn is over and the restraining orders regarding Lake Sakakawea and Lake Oahe have expired, the lawsuits continue. The corps has appealed the district courts' judgments and maintains that the corps' decisions concerning water levels in the reservoirs and the river are not reviewable by a court. North Dakota has amended its complaint in the original lawsuit asking the court to order the corps to complete the *Master Manual* revision and treat all users equally instead of providing preferential treatment to navigation.

Concerning the *Master Manual*, the Corps of Engineers was scheduled to release the final environmental impact statement on the *Master Manual* review in May 2002. The corps did not meet that schedule. Instead the corps began consulting with the United States Fish and Wildlife Service regarding the impacts of the proposed revision on the threatened and endangered species in the Missouri River system resulting in an indefinite delay of the *Master Manual* revision.

CONCLUSION

The committee makes no recommendation concerning its statutory responsibilities.

HIGHER EDUCATION COMMITTEE

The Higher Education Committee was assigned responsibilities in two areas.

Section 18 of 2001 Senate Bill No. 2003 directed a study of the State Board of Higher Education's implementation of the performance and accountability measures report required by 2001 Senate Bill No. 2041. In addition, the committee was assigned, pursuant to Section 15 of 2001 Senate Bill No. 2003, the responsibility to receive reports from the State Board of Higher Education with respect to the board's progress in establishing and implementing a long-term enrollment management plan.

Section 17 of 2001 Senate Bill No. 2003 directed a study of the responsibilities and functions of the College Technical Education Council and the implementation of the workforce training regions.

Committee members were Senators Dave Nething (Chairman), Linda Christenson, Tim Flakoll, Tony Grindberg, Ray Holmberg, Ed Kringstad, Elroy N. Lindaas, Ken Solberg, and Rich Wardner and Representatives Ole Aarsvold, Rachael Disrud, Eliot Glassheim, Michael Grosz, Pam Guleson, Roxanne Jensen, Nancy Johnson, Myron Koppang, Bob Martinson, Ralph Metcalf, Bill Pietsch, Janet Wentz, and Lonny Winrich.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2002. The Council accepted the report for submission to the 58th Legislative Assembly.

HIGHER EDUCATION PERFORMANCE AND ACCOUNTABILITY MEASURES STUDY

Section 18 of 2001 Senate Bill No. 2003 directed a study of the State Board of Higher Education's implementation of the performance and accountability measures report. Senate Bill No. 2041 (2001) established a North Dakota University System and required the system to develop a strategic plan and provide an annual performance and accountability report.

In addition, the committee was assigned, pursuant to Section 15 of 2001 Senate Bill No. 2003, the responsibility to receive reports from the State Board of Higher Education with respect to the board's progress toward establishing and implementing a long-term enrollment management plan.

Background

The North Dakota University System consists of 11 institutions under the control of the State Board of Higher Education. The system served approximately 37,656 students (headcount enrollment) during the 2000-01 academic year, which represents approximately 29,608 full-time equivalent (FTE) students. Total spending provided by the 2001 Legislative Assembly for higher education institutions, including the University System office, totaled \$447,321,037, of which \$366,953,836 was from the general fund and \$80,367,201 from special funds. The legislative appropriations for the 11 institutions, the University System office, and the Forest

Service support 3,088.39 FTE positions for the 2001-03 biennium.

1999-2000 Study

The higher education system has been studied on numerous occasions by Legislative Council committees. The Higher Education Committee during the 1999-2000 interim studied 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 the appropriate accountability and reporting system for the University System. The committee through the use of 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 discussed shifts, trends, and realities that impact the state of North Dakota and the University System and developed expectations for the University System, recommendations concerning higher education in North Dakota, and accountability measures and success indicators that correspond with the expectations for the University System.

The committee recommended the following bills regarding higher education in North Dakota:

- Senate Bill No. 2037 (2001), which, as introduced, provided a continuing appropriation for all funds in higher education institutions' special revenue funds, including tuition, and allowed institutions to carry over at the end of the biennium unspent general fund appropriations.
- Senate Bill No. 2038 (2001), which, as introduced, required 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 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 and required 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 for specific strategies or initiatives and an appropriation for asset funding for renewal and replacement of physical plant assets.
- Senate Bill No. 2039 (2001), which, as introduced, allowed 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 (2001), which, as introduced, allowed 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 (2001), which, as introduced, recognized the institutions under the control of the State Board of Higher Education as the North Dakota University System and required the University System to develop a strategic plan that 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 (2001), which, as introduced, amended and repealed 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 also recommended financial and nonfinancial accountability measurements to be reported annually at the University System level.

2001 Legislation

The 2001 Legislative Assembly amended Senate Bill No. 2003 to:

- Provide that the State Board of Higher Education's annual performance and accountability report as required by Senate Bill No. 2041 (2001) include an executive summary and specific performance and accountability measures regarding education excellence, economic development, student access, student affordability, and financial operations.
- Provide a continuing appropriation for higher education institutions' special revenue funds, including tuition income and local funds. This legislative action, which was originally a provision in Senate Bill No. 2037 (2001), as introduced, is effective through June 30, 2003.
- Require the budget estimates for higher education to include block grants for a base funding component and for an initiative funding component and a budget estimate for an asset funding component. This legislative action, which was originally a provision in Senate Bill No. 2038 (2001), as introduced, is effective through June 30, 2003.
- 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. This legislative action, which was originally a provision in Senate Bill No. 2038 (2001), as introduced, is effective through June 30, 2003.
- Allow higher education institutions to carry over at the end of the biennium unspent general fund appropriations. This legislative action, which was originally a provision in Senate Bill No. 2037

(2001), as introduced, is effective through June 30, 2003.

The 2001 Legislative Assembly amended Senate Bill No. 2039, which was recommended by the 1999-2000 interim Higher Education Committee, 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 \$385,000.

The 2001 Legislative Assembly did not approve Senate Bill No. 2040, which was recommended by the 1999-2000 interim Higher Education Committee, 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.

The 2001 Legislative Assembly adopted Senate Bill No. 2041, which was recommended by the 1999-2000 interim Higher Education Committee, 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.

The 2001 Legislative Assembly also adopted Senate Bill No. 2042, which was recommended by the 1999-2000 interim Higher Education Committee, 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 were no longer appropriate.

Higher Education Roundtable

A Higher Education Roundtable consisting of the 22 members of the Higher Education Committee and 44 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 reconvened during the 2001-02 interim to discuss the implementation status of the 1999-2000 Higher Education Roundtable recommendations and future high-priority action items. The University System contracted with Mr. Dennis Jones, President, National Center for Higher Education Management Systems, Boulder, Colorado, for consulting services and to facilitate roundtable discussion and the development of action items.

The Higher Education Roundtable with assistance from the facilitator:

1. Reviewed plans for and accomplishments relating to the recommendations of the 1999-2000 Higher Education Roundtable.
2. Reviewed the state's New Economy Initiative and its linkage to the Higher Education Roundtable cornerstones and recommendations.
3. Developed high-priority action items concerning higher education in North Dakota.

Accomplishments

The Higher Education Roundtable received information from the State Board of Higher Education, higher education institutions, and the executive branch regarding plans for and accomplishments relating to the recommendations of the 1999-2000 Higher Education Roundtable.

The State Board of Higher Education has developed a University System vision statement and changed the University System mission statement to provide that the University System continue to provide high-quality education to students and assume a major responsibility for enhancing the economy of North Dakota. The board has also developed a new University System strategic plan based on the recommendations from the 1999-2000 Higher Education Roundtable, approved a long-term financing plan and resource allocation model, and published the first annual performance and accountability report in January 2002.

The roundtable learned the higher education institutions have developed alignment plans that describe the actions the institutions are performing and intending to perform in response to the recommendations of the 1999-2000 Higher Education Roundtable. The institutions are also working collaboratively to deliver high-demand educational programs in rural North Dakota, increase research development efforts, and increase the number of partnerships with the private sector.

The roundtable learned the Governor's office expects the University System to concentrate on the transfer of research efforts to product development and economic development and improve communications with local communities.

The roundtable learned the 2002 Community College Futures Assembly awarded the Bellwether Award for planning, governance, and finance to the Higher Education Roundtable process. Also, the Higher Education Roundtable process was the winner of the 2002 Midwestern Legislative Conference Innovations Exchange and Awards Program Award.

New Economy Initiative

The Higher Education Roundtable reviewed the New Economy Initiative and its linkage to the Higher Education Roundtable and learned the initiative is a statewide effort to mobilize all North Dakotans to develop new ideas, grow the economy, and create a more prosperous state. The initiative relies on two main tools--industry clusters and action teams. The industry clusters--flexible food manufacturing, tourism, information technology, aerospace, energy and environment, and advanced manufacturing--are to create strategies to increase growth in selected industries, and the action teams are to address the challenges that affect all industries. An important aspect of the initiative is to grow talent to match the new knowledge-based economy.

Task Force Process

The Higher Education Roundtable reconvened the six task forces formed for the 1999-2000 Higher Education

Roundtable--Economic Development Connection, Education Excellence, Flexible and Responsive System, Accessible System, Funding and Rewards, and Sustaining the Vision--to develop high-priority action items and identify the stakeholders responsible for achieving the respective high-priority action items.

The task forces, chaired by legislative committee members, developed by consensus the following high-priority action items:

Economic Development Connection

1. Review existing state laws and procedures to determine if the laws and procedures are sufficient to protect the privacy and confidentiality of the information of business and industry in partnership with the North Dakota University System, and if not, request that legislation be developed and provided to the interim Higher Education Committee. (Responsibility: Economic Development Connection Task Force)
2. Endorse the New Economy Initiative's statewide talent pool strategy and the following related five strategic statements:
 - a. Attract and embrace a more diverse workforce that targets innovation and technology and other careers identified by the needs assessment tool.
 - b. Utilize the assets of colleges and universities in attracting and retaining a new economy workforce.
 - c. Develop an aggressive marketing campaign promoting North Dakota's "quality of place."
 - d. Expand workforce training and lifelong learning to match North Dakota's current workforce to new economy opportunities and move to a high-value workforce.
 - e. Become a national model for providing rural preschool through postsecondary education and lifelong learning.

(Responsibility: State Board of Higher Education, higher education institutions, Legislative Assembly, executive branch, private sector)

Education Excellence

1. Continue a strong emphasis on making and keeping faculty salaries competitive. (Responsibility: State Board of Higher Education, higher education institutions)
2. Begin to conceptualize and develop an approach to kindergarten through postsecondary education using a roundtable approach. (Responsibility: State Board of Higher Education, higher education institutions, kindergarten through grade 12)
3. Encourage and strongly support emphasis on experiential learning, including the inclusion of students with faculty in applied research and other problem-solving activities. (Responsibility: State Board of Higher Education, higher education institutions)
4. Enhance emphasis on research as a means to attract and retain faculty. (Responsibility: State

Board of Higher Education, higher education institutions)

5. Consider the establishment of an enhanced state scholarship program. (Responsibility: State Board of Higher Education, higher education institutions)

Flexible and Responsive System

1. Continue and expand the flexibility granted to the North Dakota University System. (Responsibility: Legislative Assembly, State Board of Higher Education)
2. Colleges and universities and the Department of Commerce must continue to establish strategic alliances with state government, businesses and industries, community groups, and federal entities. (Responsibility: State Board of Higher Education, higher education institutions, executive branch)
3. Examine the balance between competition and cooperation in the North Dakota University System and provide mechanisms for guidance. (Responsibility: State Board of Higher Education, higher education institutions)

Accessible System

1. Develop partnerships to ensure students leave kindergarten through grade 12 with the knowledge and skills necessary to function effectively as college and university students. (Responsibility: State Board of Higher Education, higher education institutions, kindergarten through grade 12)
2. Encourage higher education institutions to become more approachable and to provide more assistance to enable older than average students to further their education and skills development. (Responsibility: State Board of Higher Education, higher education institutions)
3. Enhance marketing efforts for recruitment purposes, including informing the public and customers of programs available and program successes. (Responsibility: North Dakota University System, Legislative Assembly)

Funding and Rewards

1. Identify strategies for maximizing campus utilization. (Responsibility: State Board of Higher Education, higher education institutions, private sector)
2. Continue to enhance campus entrepreneurship and partner with state and federal government, private sector, and other entities. (Responsibility: State Board of Higher Education, higher education institutions, private sector)
3. Ensure that focus and rewards are consistent with established North Dakota University System and higher education institutions' goals. (Responsibility: State Board of Higher Education, higher education institutions)
4. Continue higher education special revenue funds continuing appropriation authority, higher education budget requests, budget estimates,

and appropriation legislation, and higher education appropriation carryover legislation passed by the 2001 Legislative Assembly. (Responsibility: Legislative Assembly, executive branch, private sector)

Sustaining the Vision

1. Continue the roundtable concept by retaining the structure of the membership and holding annual meetings. (Responsibility: Legislative Council)
2. Develop a clear and concise message of the roundtable which explains the roundtable benefits. (Responsibility: North Dakota University System)
3. "Tell the story" by broadening and intensifying the message to the following:
 - a. General public.
 - b. Business community.
 - c. Legislative Assembly.
 - d. Media.
 - e. North Dakota University System faculty.
 - f. Kindergarten through grade 12.(Responsibility: State Board of Higher Education, higher education institutions, Legislative Assembly, executive branch, private sector)

The Higher Education Roundtable received comments from the facilitator regarding the high-priority action items in the following areas:

- Economic development - Barriers must be identified that make developing partnerships with the University System difficult;
- Education excellence - The state may want to consider the expansion of programs such as the workstudy program into the private sector instead of implementing an enhanced scholarship program;
- Accessibility - The University System must determine how to deliver higher education to the student instead of how to bring the student to the higher education institution;
- Funding and rewards - Budgetary flexibility is important during times of economic hardship;
- Sustaining the vision - It is important for the roundtable concept to be continued and for the entire state to understand the benefits of the Higher Education Roundtable; and
- Competition for students - Higher education institutions cannot be successful by competing for the same pool of students. North Dakota has a large untapped market of nontraditional students that could be attracted to institutions or could receive education through nontraditional methods such as interactive video.

The Higher Education Roundtable accepted the task force high-priority action items at its June 2002 meeting and forwarded the action items to the Higher Education Committee for its consideration.

Long-Term Financing Plan and Resource Allocation Model

The committee received testimony from representatives of the University System office, State Board of Higher Education, and the National Center for Higher Education Management Systems regarding the establishment of a long-term financing plan and resource allocation model.

The committee learned that during the late 1970s and early 1980s, funding for higher education was based on a formula-funding model developed in part as a result of a legislative interim study. The formula was largely enrollment- and size-driven with internal institution per student cost comparisons. During the late 1980s and 1990s, the formula-funding model was abandoned due largely to declining state revenues and was replaced with an incremental budgeting and appropriation process. The 1999-2000 interim Higher Education Committee studied higher education funding and recommended the State Board of Higher Education and the chancellor develop and recommend to the 2003 Legislative Assembly a financing plan to address the gap between current funding levels and resources needed to implement the recommendations of the 1999-2000 Higher Education Roundtable and a resource allocation model.

The committee learned the State Board of Higher Education contracted with the National Center for Higher Education Management Systems for assistance with the development of a long-term financing plan and resource allocation model. The National Center for Higher Education Management Systems recommended the State Board of Higher Education be consistent with the recommendations of the 1999-2000 Higher Education Roundtable and develop a long-term financing plan consisting of:

- A base operating budget for each institution that includes parity and equity funding.
- Special initiative funding for the State Board of Higher Education to support the recommendations of the 1999-2000 Higher Education Roundtable.
- Capital asset funding for each institution.

The State Board of Higher Education reviewed the recommendations of the National Center for Higher Education Management Systems and adopted the following beliefs and principles to serve as the foundation of the long-term financing plan and resource allocation model:

1. Higher education funding should be a shared responsibility of the state, students, and higher education institutions.
2. Higher education institutions should be encouraged to generate additional revenues and to diversify revenue sources.
3. Higher education institutions and faculty and staff should be rewarded and recognized for behavior consistent with the principles of the 1999-2000 Higher Education Roundtable.
4. Higher education institutions should be given the flexibility to set tuition rates, and the State

Board of Higher Education should be accountable for maintaining affordability for North Dakota citizens.

5. Higher education institutions should retain the current level of state general fund appropriation as base operating funds, and biennial adjustments should be made to address parity or inflationary increases.
6. Equity differentials, calculated by comparisons with peer comparator institutions, should be addressed in the biennial appropriation process.
7. The State Board of Higher Education should receive a specific appropriation to support state-wide priorities and to reward collaboration between institutions.
8. Higher education institutions should be held accountable for the outcomes of the goals and objectives in strategic plans.
9. The unique missions of higher education institutions should be recognized in establishing an institution's base funding and adequate funding should be provided to maintain an institution's capacity to deliver its mission.
10. Higher education institutions should be given the flexibility to allocate resources.
11. The State Board of Higher Education should request separate funding for the maintenance and replacement of University System facilities and infrastructure.

The committee learned the State Board of Higher Education approved a long-term financing plan composed of base operating funding, special initiative funding, and capital asset funding components and will recommend the long-term financing plan to the 2003 Legislative Assembly. The State Board of Higher Education's recommendations relating to the base operating funding component of the long-term financing plan and resource allocation model are:

1. Operating fund benchmarks should be established on a per FTE student basis for determining budget requests and legislative appropriations for each institution by evaluating the most recently available national integrated postsecondary education data systems (IPEDS) data on state appropriations and net tuition revenues for peer comparator institutions. The operating fund benchmarks should be reestablished every six years, and in the intervening years the benchmarks should be adjusted by a percentage amount equivalent to the changes in the national consumer price index. The operating benchmarks per FTE student recommended by the State Board of Higher Education are:

North Dakota State University, excluding agriculture extension and experiment	\$10,500
University of North Dakota, including the School of Medicine and Health Sciences	\$13,250

Dickinson State University	\$7,500
Mayville State University	\$9,000
Minot State University	\$8,500
Valley City State University	\$9,000
Bismarck State College	\$7,750
Minot State University - Bottineau	\$9,000
State College of Science	\$8,500
Lake Region State College	\$9,250
Williston State College	\$7,500

2. Higher education funding should be reflective of a shared responsibility among stakeholders. The State Board of Higher Education's recommended shared funding responsibilities are:

Tiers	State Funding Responsibility	Student Funding Responsibility
University of North Dakota and North Dakota State University	60%	40%
Minot State University	65%	35%
Mayville State University, Valley City State University, and Dickinson State University	70%	30%
Bismarck State College, Minot State University - Bottineau, State College of Science, Lake Region State College, and Williston State College	75%	25%

3. Budget requests and legislative appropriations should be developed to fund institutions at 85 percent of the benchmarks in six years and 95 percent of the benchmarks in 12 years.
4. The higher education budget requests and legislative appropriations should be based on the following:
- Base funding should continue to be provided to all 11 institutions and include operating fund increases to address parity or inflation.
 - General fund appropriations should not be reallocated between institutions.
 - A portion of increased state general fund appropriations should be allocated to parity and equity with no more than 80 percent of all new funding allocated to parity or inflation and no less than 20 percent of new funds be allocated to equity.
 - Equity funds should be distributed on a weighted average of each institution's gap differential to its peer comparator institutions.
 - State general fund appropriations should not be reduced for any institution from the previous biennium until such time that the institution exceeds 105 percent of its peer

benchmark, or enrollment declines are sufficient to cause a reevaluation of its benchmark.

5. The State Board of Higher Education should continue to approve the base tuition rate at each institution and allow institutions to establish additional tuition rate charges and discounting policies.

The State Board of Higher Education's recommendation relating to the special initiative component of the long-term financing plan and resource allocation model is for an appropriation equivalent to 2 percent of the total University System state general fund appropriation to be phased in over six years.

The State Board of Higher Education's recommendations relating to the capital financing component of the long-term financing plan and resource allocation model are:

- A renewal and replacement funding model should be developed to achieve funding equal to 2 percent of total capital asset replacement value within 10 to 16 years.
- Institutions should be required to demonstrate funds have been spent on renewal and renovation projects or funds placed in escrow for large renewal and renovation projects.
- When renewal and replacement funding reaches 2 percent of total capital asset replacement value, institutions should cease requesting additional renewal and replacement funding, except for funds used to address the deferred maintenance backlog.
- Additional renewal and replacement funds will not be provided to an institution for costs associated with new capital assets if the institution is already at the renewal and replacement benchmark level.

The committee learned the state would have to increase funding for higher education by approximately \$80 million per biennium to implement the recommended long-term financing plan and to achieve base operating funding levels of 85 percent of the established benchmark levels or increase funding by approximately \$118 million per biennium to achieve base operating funding levels of 95 percent of the established benchmark levels.

Performance and Accountability Report

The 2001 Legislative Assembly in Senate Bill No. 2041 required the University System to provide an annual performance and accountability report and provide that the report include an executive summary and identify progress on specific performance and accountability measures in the areas of education excellence, economic development, student access, student affordability, and financial operations.

The committee learned the State Board of Higher Education adopted 11 performance and accountability measures, in addition to the measures required by the 2001 Legislative Assembly, that are to provide

information on major objectives of the State Board of Higher Education.

The committee learned the reporting timeline for the performance and accountability measures will vary due to the availability of data. The level of reporting for the performance and accountability measures also varies depending on whether the reporting is to the Legislative Assembly or the State Board of Higher Education.

The committee received the University System's first annual performance and accountability report in January 2002. The report included information on approximately one-third of the performance and accountability measures required by the 2001 Legislative Assembly and adopted by the State Board of Higher Education. The committee reviewed the report and learned:

- The University System's institutions performed very well when compared to other states and national standards;

- The number of businesses provided employee training by North Dakota's workforce training system increased by 134 percent from fiscal year 2000 to fiscal year 2001;
- University System graduates exceeded the national first-time pass rate on national examinations for most professions;
- The University System's fall 2001 enrollment was at an alltime high of 37,596 students; and
- The University System generated approximately 62 percent of its total education-related revenue in fiscal year 2001 from tuition and fees, sales and services, grants, and gifts.

The second performance and accountability report is to be completed and available in January 2003 and will include information on approximately three-fourths of the required performance and accountability measures.

The third report to be published in January 2004 will include information on all performance and accountability measures. The performance and accountability measures are:

Performance and Accountability Measure	Reporting Level (System, Tier, Campus, Other)		Reporting Timeline	Data Source
	Reporting Level to Legislature	Reporting Level to State Board of Higher Education		
2001 Senate Bill No. 2003				
Students' performance on nationally recognized examinations in their fields compared to the national averages	By professional area	By campus	2002	Campus data National examination administration
First-time licensure pass rates compared to other states	By professional area	By campus	2001	National licensing boards
Alumni-reported and student-reported satisfaction with preparation in selected major, acquisition of specific skills, and technology knowledge and abilities	By system	By campus	2003	American College Test (ACT) or Noel Levitz alumni survey ACT student opinion survey or Noel Levitz student satisfaction survey combined with Noel Levitz institutional priorities survey
Employer-reported satisfaction with preparation of recently hired graduates	By system	By campus	2003	Campus placement offices
Biennial report on employee satisfaction relating to the University System and local institutions	By campus per legislative request	By campus	2003	Noel Levitz institutional priorities survey Other employee surveys Higher Education Research Institute (HERI) report
Ratio of faculty and staff to students	By tier	By campus	2002	Annual budget - FTE faculty and staff fall enrollment report
Student graduation and retention rates	By system	By campus	2003	IPEDS Student Progress and Achievement Reporting Cooperative (SPARC) Graduation rate survey Noel Levitz retention management system or ACT nonreturning student survey
Enrollment in entrepreneurship courses and the number of graduates of entrepreneurship programs	By system	By campus	2002	National clearinghouse Higher Education Computer Network (HECN) IPEDS enrollment report and graduation rate survey

Performance and Accountability Measure	Reporting Level (System, Tier, Campus, Other)		Reporting Timeline	Data Source
	Reporting Level to Legislature	Reporting Level to State Board of Higher Education		
Percentage of University System graduates obtaining employment appropriate to their education in the state	By system	By campus	2002	Followup information on North Dakota education and training (FINDET) Placement offices Employer surveys
Number of businesses and employees in the region receiving training	By system (information by quadrant will be in campus year-end report)	By campus	2001	Workforce training quadrants Campus continuing education office
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	By system	By campus	2002	North Dakota Data Census Center 45-minute map
Number and trends of enrollments in courses offered by nontraditional methods	By system	By campus	2001	Campus administrative information system (AIS) information through HECN
Tuition and fees on a per student basis compared to the regional average	By tier	By campus	2001	Washington tuition and fee survey
Tuition and fees as a percentage of median North Dakota household income	By tier	By campus	2001	Washington tuition and fee survey United States Census Bureau
Cost per student in terms of general fund appropriations and total University System funding	By system	By campus	2001	Audited financial statements Fall enrollment report
Administrative, instructional, and other costs per student	By system	By campus	2001	Audited financial statements Fall enrollment report
Per capita general fund appropriations for higher education	By system	By campus	2001	Audited financial statements United States Census Bureau
State general fund appropriation levels for University System institutions compared to peer institutions general fund appropriation levels	By campus	By campus	2002	IPEDS data
Percentage of total University System funding used for instruction, research, and public service	By system	By campus	2001	Audited financial statements
Percentage of total University System funding used for institutional support, operations, and maintenance of physical plant	By system	By campus	2001	Audited financial statements
Ratio measuring the funding derived from the operating and contributed income compared to total University System funding	By system	By campus	2001	Audited financial statements
Ratio measuring the size of the University System's outstanding maintenance as compared to its expendable net assets	By system	By campus	2002	Campus master plans Audited financial statements
Ratio measuring the amount of expendable net assets as compared to the amount of long-term debt	By system	By campus	2001	Audited financial statements
Research expenditures in proportion to the amount of revenue generated by research activity and funding received for research activity	By system	By campus	2002	Audited financial statements Other sources not yet identified
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	By campus	By campus	2001	HECN general ledger

Performance and Accountability Measure	Reporting Level (System, Tier, Campus, Other)		Reporting Timeline	Data Source
	Reporting Level to Legislature	Reporting Level to State Board of Higher Education		
State Board of Higher Education A status report on higher education financing as compared to the long-term financing plan	By campus	By campus	2002	Long-term financing plan (IPEDS data)
Incentive funding, including the allocation and use of incentive funding	By system	By campus	2002	HECN general ledger Campus records
State general fund appropriation levels and trends as compared to changes in the state's economy and total state general fund appropriations	By system	By campus	2002	Office of Management and Budget state appropriation reports
Percentage of total University System funding used for academic support, student services, and scholarships and fellowships	By system	By campus	2001	Audited financial statements
Workforce training information, including levels of satisfaction with training events as reflected in information systematically gathered from employers and employees receiving training	By system (information by quadrant will be in campus year-end reports)	By campus	2001	Workforce training quadrants
Levels and trends in partnerships and joint ventures between University System institutions	By system (with campuses identified in the data)	By campus	2002	Campus articulation agreements North Dakota University System distance education log Number of collaboratively flagged students
Levels and trends in the number of students achieving goals - Institution meeting the defined needs/goals as expressed by students	By system	By campus	2003	ACT entering student survey ACT college outcome survey
Student enrollment information, including: 1. Total number and trends in full-time, part-time, degree-seeking, and non-degree-seeking students being served 2. The number and trends of individuals, organization, and agencies served through noncredit activities	By system	By campus	1. 2001 2. 2002	Campus AIS information through HECN Workforce training quadrants and campus continuing education offices
Levels of satisfaction with responsiveness as reflected through responses to evaluations and surveys of clients: 1. Graduates and individuals completing programs 2. Employers 3. Companies and employees receiving training	By system	By campus	1. 2001 2. 2003 3. 2001	ACT or Noel Levitz surveys Workforce training quadrants and campus continuing education offices
Levels of satisfaction and reasons for noncompletion as reflected in a survey of individuals who have not completed their programs or degrees	By system	By campus	2003	ACT college outcome survey or Noel Levitz retention management system Campus exit interviews
Levels and trends in rates of participation of: 1. Recent high school graduates and nontraditional students 2. Individuals pursuing graduate degrees	By system	By campus	2002	HECN Campus AIS information through HECN

Long-Term Enrollment Management Plan

The committee learned the State Board of Higher Education formed a task force consisting of board members and higher education institution presidents to direct the development of a long-term enrollment management and service plan and anticipates

completing the enrollment management and service plan by December 2002 and presenting the plan to the 2003 Legislative Assembly.

The State Board of Higher Education's primary goal of the long-term enrollment management and service plan is to enhance the economy of North Dakota and

increase the working age population of the state by maximizing the utilization of the higher education institutions in the University System. The board's expectations for the long-term enrollment management and service plan are to:

- Recognize the realities of population trends, high school graduation levels, and other demographic and economic trends occurring in the state and in surrounding states.
- Enhance, support, and empower higher education institutions to achieve their enrollment and retention goals.
- Combine and coordinate the efforts of all the higher education institutions in the University System to serve the needs of North Dakota in a coherent, efficient, and effective manner.
- Address the need to increase the working age population of North Dakota through high-value jobs and an attractive living and working environment.
- Increase the diversity of students enrolled in the University System's higher education institutions.
- Respond to the needs and expectations of students and other clients to be served.

University System Admission Requirements

Related to the committee's assigned study, the committee received information regarding the University System's admission requirements. The committee learned an individual who wants to attend any of the 11 higher education institutions in the University System must have a high school diploma or general educational development (GED) certificate and must have completed the American College Test (ACT) or the Scholastic Aptitude Test (SAT), unless the student is age 25 or older on the first day of class, is from a foreign country other than Canada, is transferring 24 or more semester credits acceptable at the receiving campus, or is exempted through an established campus policy.

The committee learned an individual who plans to attend one of the University System's four-year institutions and who graduated from high school in 1993 or later must have completed a core curriculum, including four units of English, three units of mathematics, three units of laboratory science, and three units of social studies. The University System's four-year institutions may provide a student an exemption to the high school core curriculum requirements and may admit such a student through a review procedure established by the institution.

Committee Recommendations

The committee accepted the Higher Education Roundtable high-priority action items discussed earlier in the report and recommends:

- House Bill No. 1039 to provide for the continuation of the continuing appropriation authority for higher education institutions' special revenue funds, including tuition.

- House Bill No. 1040 to provide for the continuation of the University System's authority to carry over at the end of the biennium unspent general fund appropriations.
- House Bill No. 1041 to continue the requirement that the budget request for the University System 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 the requirement that the appropriation for the University System include block grants for a base funding appropriation and for an initiative funding appropriation and an appropriation for asset funding.
- House Bill No. 1042 to require the University System performance and accountability report to include an executive summary and specific information regarding education excellence, economic development, student access, student affordability, and financial operations.

COLLEGE TECHNICAL EDUCATION COUNCIL AND WORKFORCE TRAINING REGIONS STUDY

Section 17 of 2001 Senate Bill No. 2003 directed a study of the responsibilities and functions of the College Technical Education Council and the implementation of the workforce training regions.

College Technical Education Council

The College Technical Education Council was formed in 1993 to improve the coordination and collaboration among the State Board for Vocational and Technical Education and the secondary and postsecondary institutions involved in vocational and technical education and workforce training in North Dakota. The council, which has an executive director, consists of the presidents of the state higher education two-year institutions, the state director of the State Board for Vocational and Technical Education, and the chancellor of the University System.

Funding and Staffing

The committee learned the University System office's legislative appropriation for the 2001-03 biennium includes funding of \$194,788 from the general fund for the College Technical Education Council, a decrease in funding of \$2,839 from the 1999-2001 legislative appropriation of \$197,627.

The College Technical Education Council is authorized a .70 FTE position for the 2001-03 biennium, a decrease of a .30 FTE position from the authorized level for the 1999-2001 biennium of one FTE position. During the 1999-2001 biennium, as allowed by Section 6 of 1999 House Bill No. 1003, the University System adjusted the staffing for the College Technical Education Council from one FTE position to a .70 FTE position to properly account for the executive director of the council also assuming the duties of the vice chancellor of strategic planning for the University System.

Responsibilities and Functions

The committee learned the College Technical Education Council is responsible for developing and recommending appropriate policies and procedures relating to vocational and technical education, serving as a vehicle for transforming the University System's two-year institutions from junior colleges into community colleges, and serving in a coordination and support role to the University System's two-year institutions providing workforce training functions.

Accomplishments and Initiatives

The committee learned the College Technical Education Council's accomplishments include the development of a program matrix to identify and determine where programs are currently being offered, where programs could potentially be offered, needs for new programs, and opportunities for collaboration among campuses; development of a core of general education courses that satisfy the general education requirements at any of the University System institutions; provision of leadership in the development of a common course-numbering system; collaboration with the statewide task force on workforce development and training on designing a more effective and responsive workforce training system for the state; completion of a statewide needs analysis identifying potential new education and training programs for consideration by higher education institutions; development of a new academic program approval process; and implementation of the delivery of practical nursing training across the state.

The committee learned the current and ongoing initiatives of the council include offering a baccalaureate degree for instructors in trade, technology, and health areas through Valley City State University; improving faculty development through a grant from the Bush Foundation; assisting with the implementation of workforce development and training; collaborating with University System institutions and business and industry representatives to more effectively connect the education, research, and service capabilities of the University System with the economic development needs and opportunities of the state; and identifying information technology education required to meet the current and growing demand for information technology workers.

Relationship With Other Entities

The committee learned the College Technical Education Council has a cooperative relationship with the two-year higher education institutions, the Department of Commerce Division of Workforce Development, and the State Board for Vocational and Technical Education. The council has been a critical structure in assisting two-year higher education institutions in developing an understanding of the unique mission and role of community colleges within the University System. The council, the director, and division leaders of the Department of Commerce hold quarterly meetings to discuss issues relating to workforce development and workforce training, and the council and the State Board for

Vocational and Technical Education review issues relating to vocational and technical programs at high schools and the two-year higher education institutions.

Workforce Training Regions

House Bill No. 1443 (1999) established a new workforce training system for North Dakota based on the recommendations of a 31-member workforce training task force representing business, education, and government which examined the state's workforce training system during the 1998-99 interim. Under the new workforce training system the state is divided into four delivery regions, and select higher education institutions are designated as having primary responsibility for workforce training programs. At each of the select higher education institutions, a special division or unit is created to contact business and industry, develop working relationships, determine training needs, and collaborate with other higher education institutions and private and public training providers to arrange for training. The four workforce training regions and the corresponding higher education institutions with workforce training primary responsibilities are:

Northwest workforce training region	Williston State College
Southwest workforce training region	Bismarck State College
Northeast workforce training region	Lake Region State College
Southeast workforce training region	State College of Science

Financial Support

The committee learned the workforce training system receives financial support from the state general fund, training fees, and funds from local business and industry, community organizations, and higher education institutions.

House Bill No. 1443, as passed by the 1999 Legislative Assembly, provided an \$875,000 general fund appropriation to the State Board for Vocational and Technical Education for contracting with select higher education institutions providing workforce training programs. The bill would have established a workforce training investment fee to be assessed against employers in the state. The fee would have been .03 percent of taxable wages and collected by Job Service North Dakota; however, this provision and provisions relating to the training investment fee were vetoed by the Governor.

The 2001 Legislative Assembly provided a \$1,350,000 general fund appropriation to the State Board for Vocational and Technical Education for the 2001-03 biennium for continued support of the workforce training initiative, an increase of \$475,000 from the 1999-2001 biennium.

The committee learned the workforce training regions submitted a hold-even budget request of \$1,350,000 from the general fund for the 2003-05 biennium.

Workforce Training Activity

The committee learned workforce training is oriented toward serving the training needs of business and industry, and workforce development is the education and

training of individuals provided by kindergarten through grade 12, higher education, and state and federal government. The types of workforce training offered include computer skills, employee skills enhancement, management skills, technical training, and apprenticeships. The workforce training regions deliver workforce training activities at higher education institutions, local schools, community centers, business locations, and through on-line classes.

The workforce training regions provided workforce training services to 1,326 businesses and 10,299 employees in fiscal year 2002. This represents an increase of 112 businesses and a decrease of 370 employees from the number receiving training in fiscal year 2001. The decrease in the number of employees receiving training was due to workforce training regions providing training to more but smaller businesses. In addition, the workforce training regions received direct training revenue of \$1,880,864 for fiscal year 2002. The following table shows workforce training activity for fiscal years 2000 through 2002:

	Fiscal Year 2000	Fiscal Year 2001	Fiscal Year 2002
Number of businesses receiving training	518	1,214	1,326
Number of employees receiving training	7,463	10,669	10,299
Direct training revenue	\$965,992	\$1,462,042	\$1,880,864

Business and Industry

The committee heard from representatives of business and industry regarding the implementation of the workforce training system. The committee learned the workforce training regions are an important source of training for small employers in the state and are essential to marketing and recruiting businesses to the state.

Future Plans

The committee learned the workforce training regions plan to create a more visible public relations effort; develop strategic partnerships with businesses, industries, and agencies; and promote workforce training at regional and state events.

Conclusion

The committee makes no recommendation regarding its study of the College Technical Education Council and the workforce training regions.

BUDGET TOURS

During the interim the Higher Education Committee functioned as a budget tour group of the Budget Section and visited Bismarck State College, Dickinson State University, Lake Region State College, Mayville State University, Minot State University, Minot State University - Bottineau, North Dakota State University, State College of Science, University of North Dakota, Valley City State University, Williston State College, Forest Service, Main Research Center, North Central Research Center, and Williston Research Center. The committee learned about institutional programs, the status of capital improvements for the 2001-03 biennium, future capital improvement needs, plans for and accomplishments regarding the recommendations of the 1999-2000 interim Higher Education Committee, and reactions to the University System's recommended long-term financing plan and resource allocation model. Institutional representatives expressed the need for continued legislative support by continuing the increased financial flexibility provided by the 2001 Legislative Assembly. The tour group minutes are available in the Legislative Council office and will be submitted in report form to the Appropriations Committees during the 2003 Legislative Assembly.

INFORMATION TECHNOLOGY COMMITTEE

North Dakota Century Code (NDCC) Section 54-35-15.1 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. Review the cost-benefit analysis of any major information technology project of the State Board of Higher Education or any institution under the control of the State Board of Higher Education if the project significantly impacts the statewide wide area network, impacts the statewide library system, or is an administrative project.
12. 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 money 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 the committee the study of the technological capacity and needs of the state as provided for in House Concurrent Resolution No. 3057 and directed the committee to expand the study to include the delivery of library services by technology. The study was to include an analysis of the state, national, and global information technology trends, an examination of the future short-term and long-term information technology needs of the state, a review of the development capacity and needs in the various regions of the state, an analysis of changes in the role of communications, media, networks, and public utilities, and a review of the public policy with respect to the role of regulation and deregulation.

The Legislative Council also assigned the committee the responsibility for reviewing the activities of the Information Technology Department, the business plan of the department, statewide information technology standards, the statewide information technology plan, and major information technology projects as provided in NDCC Section 54-35-15.2 and for receiving:

- A report from the Chief Information Officer regarding the coordination of services with political subdivisions and a report 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 pursuant to NDCC Section 54-59-12.
- A report from the Information Technology Department regarding any executive branch agency or institution that does not agree to conform to its information technology plan or comply with statewide policies and standards pursuant to NDCC Section 54-59-13.
- An annual report from the Information Technology Department regarding information technology projects, services, plans, and benefits pursuant to NDCC Section 54-59-19.
- A report from State Radio Communications on any recommended changes in 911 telephone system standards and guidelines pursuant to NDCC Section 57-40.6-11.
- A report from the Public Safety Answering Points Coordinating Committee by November 1 of each even-numbered year on city and county fees on telephone exchange access service and wireless service pursuant to NDCC Section 57-40.6-12.
- Information from the Information Technology Department regarding performance measures developed by the department to assist the Legislative Assembly in determining the effectiveness and efficiency of the department's operations pursuant to Section 9 of Senate Bill No. 2043.
- A report by the Superintendent of Public Instruction at least once every five months on the Superintendent's pursuit of grant funds during the 2001-03 biennium for projects relating to the use of technology in elementary and secondary

education pursuant to Section 10 of Senate Bill No. 2251.

Committee members during the 2001-02 interim were Senators Larry J. Robinson (Chairman), Randy A. Schobinger, and Ken Solberg and Representatives Robert Huether, Keith Kempenich, Bob Skarphol, and Robin Weisz and Chief Information Officer Curtis L. Wolfe.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2002. The Council accepted the report for submission to the 58th 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) of the Office of Management and Budget 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 Central Data Processing 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 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. 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 to 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 Corporation 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.

In addition, the committee reviewed information regarding:

- Standards adopted by the Information Services Division for the acquisition of information technology services or equipment by executive branch agencies.
- The potential impact of the failure of computer hardware, software, and embedded chips due to items not being year 2000 (Y2K) compliant.

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 Corporation.

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.

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. 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.

1999-2000 Study

The Legislative Council Information Technology Committee appointed for the 1999-2000 interim reviewed information regarding the implementation of a new statewide information technology network, major information technology projects, the financing of information technology projects, the statewide information technology plan, the Information Technology Department's business plan, and initiatives of the department, including e-government, enterprise resource planning, geographic information systems, electronic document management systems, and information technology purchasing.

The committee recommended 2001 Senate Bill No. 2043, which, as introduced, 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 also authorized the Information Technology Department to purchase equipment and software through financing arrangements, specified additional requirements that must be included in the department's business plan, replaced the Statewide Wide Area Network Advisory Committee with the Statewide Information Technology

Advisory Committee, changed the deadline for agencies submitting information technology plans from January 15 to March 15 of each even-numbered year, and clarified that information collected by the Information Technology Department from agencies regarding information technology standards, compliance review, and plans is exempt from open records requirements.

2001 Legislation

The 2001 Legislative Assembly adopted Senate Bill Nos. 2043 and 2251 and House Bill No. 1015 relating to the duties of the legislative Information Technology Committee and the operations of the Information Technology Department.

Senate Bill No. 2043, which was recommended by the 1999-2000 interim Information Technology Committee, included all the provisions as introduced and in addition requires the Information Technology Department to prepare an annual report regarding major information technology projects, rates, and benefits and to develop performance measures to assist the Legislative Assembly in determining the effectiveness and efficiency of the department's operations.

Senate Bill No. 2251 created a new Educational Technology Council to replace the Educational Telecommunications Council and provided that funding appropriated by the 2001 Legislative Assembly for the Division of Independent Study, SENDIT Technology Services, and the Center for Innovation in Instruction be transferred to the Information Technology Department for use by the Educational Technology Council.

Section 28 of House Bill No. 1015 requires the Information Technology Department to provide the Office of Management and Budget an analysis of the technology costs and savings involved in proposed building construction projects.

STUDY OF THE TECHNOLOGICAL CAPACITY AND NEEDS OF THE STATE

The Legislative Council assigned the committee the study of the technological capacity and needs of the state as provided in House Concurrent Resolution No. 3057 and directed the committee to expand the study to include the delivery of library services by technology. The study was to include an analysis of the state, national, and global information technology trends, an examination of the future short-term and long-term information technology needs of the state, a review of the development capacity and needs in the various regions of the state, an analysis of changes in the role of communications, media, networks, and public utilities, and a review of the public policy with respect to the role of regulation and deregulation.

In response to the study directives, the committee reviewed information regarding:

1. Information technology services, including information on current coverage areas, planned coverage areas, service rates, service trends, service issues and barriers, and the desired role

of government in information technology services.

2. Information technology service regulations, issues, and trends.
3. The potential for wireless tower sharing.
4. Commercial use of the statewide information technology network.
5. Key trends impacting technology in the near future and the general impact of technology on state government.
6. A citizen and business survey completed by the University of North Dakota Social Science Research Institute regarding Internet accessibility, current and planned use of the Internet, barriers to the use of the Internet, desire for on-line government applications, and trends in the use of information technology.
7. The delivery of library services by technology.

Information Technology Services

The committee received information from representatives of Dakota Carrier Network, Qwest, Midcontinent Communications, Western Wireless Corporation, Extend America, Monet Mobile Networks, AT&T, Northwest Communications Cooperative, Polar Communications, and Consolidated Telcom regarding issues relating to information technology services, including current coverage areas, planned coverage areas, service rates, service trends, service issues and barriers, and the desired role of government in information technology services. The committee learned:

- Dakota Carrier Network is a broadband carrier, not an Internet service provider, that operates a fiber optics communications network to provide broadband services to all regions of North Dakota.
- Qwest provides digital subscriber line (DSL) service to individuals in the Bismarck, Grand Forks, Fargo, and West Fargo areas. Qwest believes the expansion of broadband services is difficult because individuals are not willing to pay for broadband services, and Qwest is required to share its information technology network infrastructure with other service providers.
- Midcontinent Communications provides cable television services and information technology services to individuals in North Dakota and South Dakota. The information technology services include cable modem high-speed Internet services and private data network services. Midcontinent Communications believes barriers to deployment of information technology in North Dakota include the lack of market density, the limited number of major business customers in small communities in need of broadband services, and regulatory control and jurisdiction. Midcontinent Communications suggested government play a significant role in the development and deployment of information technology services by working with all providers of services and

restraining any desire to tax the industry before development is complete.

- Western Wireless Corporation has made a significant investment in North Dakota through the development of a wireless infrastructure, the introduction of new digital technologies, and the expansion of coverage in rural areas.
- Extend America, a Bismarck-based company, plans to invest in a digital wireless high-speed technology infrastructure in North Dakota, South Dakota, Montana, Wyoming, and Nebraska. Extend America believes it is important to build the information technology infrastructure of the state to provide access to education and medical care, and the Legislative Assembly's responsibility is to develop policies to promote growth in the information technology industry.
- Monet Mobile Networks, a wireless carrier that provides high-speed, data-only mobile Internet service, launched a wireless technology in Fargo, North Dakota, and Sioux Falls, South Dakota, in January 2002 and planned to launch the technology in Grand Forks and Bismarck, North Dakota, by September 2002.
- AT&T completed a \$50 million network upgrade in North Dakota in 2000 by constructing a fiber optics backbone infrastructure across the state from east to west. AT&T offers Internet access through a variety of technologies, including DSL, direct private line access, Ethernet, or AT&T's ATM or frame-relay services.
- Northwest Communications Cooperative provides Internet services to customers through dial-up service, DSL service, and wireless DSL service. The DSL service is available to 60 to 70 percent of the individuals in the cooperative, and the wireless DSL service is available to 90 to 95 percent of those individuals.
- Polar Communications expanded into the Mayville and Portland areas by investing \$3.5 million in infrastructure to provide telephone, cable television, and cable high-speed Internet services. In addition DSL service or wireless DSL service is available to approximately 98 percent of the individuals in the cooperative's coverage area.
- Consolidated Telcom provides DSL service to individuals in Dickinson, New England, Rhame, Killdeer, Halliday, Scranton, Dodge, South Heart, Watford City, Bowman, Regent, Mott, Hettinger, and Richardton and wireless DSL service to individuals in Ladd, Amidon, Reeder, Manning, Dunn Center, and Grassy Butte.

Information Technology Service Regulations, Issues, and Trends

The committee received information regarding information technology service regulations, issues, and trends. The committee learned in regard to information technology service regulation in North Dakota, services

basically fall into two categories--essential and nonessential. The essential services are largely regulated services that include basic telephone rates and interstate switched access. The services beyond those are considered nonessential and in North Dakota that means the services are unregulated. In regard to information technology trends the committee learned there are four proceedings before the Federal Communications Commission that will have a large impact on the regulatory framework for broadband services. The proceedings involve the treatment of cable modem service, the treatment of incumbent local exchange carriers, the review of the unbundled network elements, and the review of Internet access providers using the traditional telephone network as a platform.

Potential for Wireless Tower Sharing

The committee received information regarding the potential for wireless tower sharing and learned there are 40 state-owned radio towers in the state used for mobile public safety communications and for State Radio Communications law enforcement communications. The Department of Transportation does not have a formal policy regarding state-owned radio tower sharing, instead the department reviews requests to use state-owned radio tower sites on a case-by-case basis. The department has allowed the United States Fish and Wildlife Service to use four radio tower sites near national wildlife refuges, and the department has signed an agreement with Adams County and the Rural Economic Area Partnership Investment Board for the placement of wind-monitoring devices on the state-owned radio tower facility in Mott.

Commercial Use of the Statewide Information Technology Network

The committee received information regarding commercial use of the statewide information technology network. The committee learned that Dakota Carrier Network believes the private sector should be responsible for providing commercial broadband services instead of allowing different entities to be connected to the statewide information technology network. The Valley City-Barnes County Development Corporation believes private sector companies in communities where interactive video services are not available should be able to utilize the state's interactive video services at a state "postal rate."

Key Trends Impacting Technology and the Impact of Technology on State Government

The committee received information regarding the key trends impacting technology in the near future and the general impact of technology on state government. The committee learned the trends in federal legislation relating to information technology include the Telecommunications Act of 1996 that established a federal universal service fund and the 2002 farm bill that included provisions to provide United States Department

of Agriculture grants, loans, and loan guarantees at 4 percent, or market rate interest, to construct, improve, and acquire facilities and equipment to provide broadband service to rural communities with fewer than 20,000 residents. The committee also learned state government may be impacted by other emerging information technology issues such as the identification of security and fraud and the addressing of privacy concerns.

Citizen and Business Information Technology Survey

The Information Technology Department and the Legislative Council contracted with the University of North Dakota Social Science Research Institute for a citizen and business information technology survey regarding Internet accessibility, current and planned use of the Internet, barriers to the use of the Internet, desire for on-line government applications, and trends in the use of information technology.

The committee received the resulting report entitled *E-Government Services and Computer and Internet Use in North Dakota* that provides information regarding Internet usage in North Dakota, the types and speeds of Internet connectivity in North Dakota, attitudes toward and behaviors in using computers and the Internet for various services, and how residents may use e-government services. The results of the report were based on 801 random telephone interviews conducted in April and May 2002 with North Dakota residents aged 18 or older. Of those, 400 comprised a random sample of urban residents and 401 represent a random sample of residents from rural areas. The survey indicated that older and poorer residents display a lower use of computers and the Internet, residents are extremely sensitive to the privacy- and security-related issues of e-government applications, and residents prefer advertising or charging the individuals who use electronic services as means to support e-government services.

The committee also received a report entitled *North Dakota Business Use of Information Technology* that provided information regarding the percentage of businesses that do and do not use computer applications and the Internet, the types and speeds of Internet connectivity, attitudes toward and behaviors in using computers and the Internet for various services, and how business may use e-government services. The results of the report were based on telephone interviews of 875 North Dakota businesses stratified by employee size conducted in April and May 2002. The target business survey populations were defined as all private sector businesses with 100 or more employees and a random sample of businesses with 99 employees or fewer. The survey indicated that although computer and Internet use among North Dakota companies is at high overall levels, firm employee size and community location factors differentiate how or whether a company uses Internet technologies. The survey also indicated that dial-up modems are the predominant Internet connection and a majority of businesses are satisfied with their connection

speeds and Internet providers. Businesses are supportive of e-government services, but they are cautious with respect to trusting the government's handling of personal and financial information.

The University of North Dakota Social Science Research Institute recommended the state develop and market strategies to call attention to privacy and security standards that address citizen and business concerns, develop strategies to target groups using the Internet the least, and continue to measure Internet use in order to assess who does and does not use the Internet and why.

Delivery of Library Services by Technology

The committee received information regarding the delivery of library services by technology and learned in October 1995 a Library Study Steering Committee met to discuss concerns and issues within the state's library community. The committee's participants defined a set of priorities for statewide library services in a planning document entitled *Library Vision 2004*. The number one priority of the document was to create a systemwide community of strong libraries working together. One of the methods used to accomplish the priority was the development of a comprehensive statewide electronic bibliographic data base that allows individuals to simultaneously search On-line Dakota Information Network (ODIN), Bismarck, Minot, and Williston library consortiums.

The committee learned libraries are using technology to utilize on-line magazines, newspapers, and references resources, utilize electronic books, establish a statewide virtual library catalog, assist with resource sharing among libraries, and perform day-to-day functions such as checking in and checking out books, tracking overdue material, and recording fines. The second phase of the statewide information technology network implementation includes the connection of 25 public libraries. The number of libraries to be connected is approximately 78 fewer than the original estimate of 103 made during the 2001 Legislative Assembly due to many libraries not being technically equipped or large enough to necessitate connection to the statewide information technology network. The committee also learned libraries will be expected to continue services to the state's senior citizen population, adapt to the needs of Generation Y (ages 10 through 17), and be the center of the educational process.

Other Information

In relation to the committee's study of the technological capacity and needs of the state, the committee received information regarding the federal universal service fund. The committee learned the Federal Communications Commission, under direction from the United States Congress, established a federal universal service fund to ensure that all people in the United States have access to fast, efficient, nationwide communications services at reasonable charges.

The federal universal service fund programs include the high-cost program, low-income program, rural health

care program, and schools and libraries program. The high-cost program provides support to telecommunications service providers that serve residents in areas of the United States that are more costly to serve. The low-income program assists eligible low-income individuals with establishing and maintaining of telecommunications services by discounting services provided by local telephone companies. The rural health care program provides support to telecommunications companies that provide reduced rates to rural health care providers for telecommunications services related to the use of telemedicine and telehealth. The schools and libraries program provides support to telecommunications companies that make telecommunications affordable for schools and libraries in the United States.

All companies that provide telecommunications services between states, including long-distance telephone companies, local telephone companies, wireless telephone companies, paging companies, and pay telephone providers, are required to provide contributions to the federal universal service fund. The amount of contributions is based on a specific percentage or contribution factor of interstate and international revenues. The companies may recover their federal universal service fund contribution from their customers, and the actual percentage or fee that a company recovers from its customers may be different from the contribution factor.

All telecommunications companies providing eligible universal services may receive distributions from the federal universal service fund. For calendar year 2001 North Dakota received federal universal service funding totaling \$30,716,000, of which \$27,732,000 was for the high-cost program, \$1,389,000 was for the low-income program, \$341,000 was for the rural health care program, and \$1,254,000 was for the schools and libraries program.

Also in relation to the committee's study of the technological capacity and needs of the state, the committee received information from Mr. Dewayne Hendricks, Chief Executive Officer, Dandin Group, Fremont, California, regarding information technology initiatives. The committee learned the Federal Communications Commission can be seen as a policy roadblock because the commission's rules are based upon technologies present in the 1930s. The committee also learned an Advanced Networking With Minority-Serving Institutions wireless project was completed with the Fort Berthold Community College in New Town and the Turtle Mountain Community College in Belcourt. The project developed a wireless infrastructure at each college to provide high-speed wireless services.

Conclusion

The committee does not make any recommendation regarding its study of the technological capacity and needs of the state.

INFORMATION TECHNOLOGY DEPARTMENT BUSINESS PLAN AND PERFORMANCE MEASURES

North Dakota Century Code Section 54-59-06 requires the Information Technology Department to develop and maintain a business plan, and Section 9 of 2001 Senate Bill No. 2043 requires the Information Technology Department to develop performance measures to assist the Legislative Assembly in determining the effectiveness and efficiency of the department's operations. Pursuant to those directives the department prepared a business plan that is designed around four business drivers and includes performance measures, objectives, and strategies. The following is a summary of the plan's business drivers and related performance measures, including information on the status of the performance measures:

Business Driver - Performance Measures	Baseline (2001)	Status as of July 2002	Target
Provide value to our customers - Continually improve the quality and timeliness of Information Technology Department's products and services while maintaining competitive rates			
Percentage of strategic initiatives completed	2000 - 35% 2001 - 50%	21.9% (with six months remaining)	65%
Percentage of completed strategic initiatives meeting objectives	Data not available	100% (with six months remaining)	2002 will establish baseline
Percentage of system availability	98.82%	98.89%	98.90%
Percentage of Information Technology Department projects completed on time within scope and budget	Data not available	76% on time 83% on budget	To be determined
Statewide direction and leadership - Provide strategic information technology direction for government and education in North Dakota and influence the deployment of information technology throughout the state			
Number of coordinated statewide initiatives	6	8	Maintain/increase

Business Driver - Performance Measures	Baseline (2001)	Status as of July 2002	Target
Information Technology Department's compliance with legislative mandates	100%	100%	100%
Information technology percentage of overall state budget	4.64%	4.64%	Monitor
Percentage of large information technology projects completed successfully	100%	100%	100%
Number of web-enabled applications available to citizens	19	33	Increase
Customer relationships and satisfaction - Understand customer business requirements and raise awareness of technologies available in order to provide products and services that will meet or exceed their expectations and assist in accomplishing their goals			
Percentage of reported problems resolved within support center (unassigned)	72%	66.2%	75%
Percentage of reported and assigned problems responded to within one hour	74%	87.5%	90%
Median time working hours required to resolve reported and assigned problems	2.53	1.98	2.25
Percentage of statewide information technology budgets directed to the Information Technology Department	1999-2001 biennium - 25% 2001-03 biennium - 31%	31%	Monitor
Customer satisfaction indexes (percentages satisfied or very satisfied) relating to:			
Cost	90%	85.3%	92%
Timeliness	96.3%	94.9%	97%
Quality	96.5%	94.6%	97%
Knowledge	97.6%	95.9%	98%
Professionalism and courtesy	100%	98.6%	100%
Learning and growth - Achieve an efficient, motivated, and educated workforce with the knowledge, skills, and ability to meet current and future challenges			
Voluntary employee turnover rate	4%	2.4%	Maintain 4%-6%
Average training hours and dollars spent per employee	\$2,000 per FTE	\$2,700 per FTE	\$2,000 per FTE
Employee satisfaction index	1.96	1.98	2

INFORMATION TECHNOLOGY DEPARTMENT ANNUAL REPORT

North Dakota Century Code Section 54-59-19 requires the Information Technology Department to prepare an annual report on information technology projects, services, plans, and benefits. Pursuant to that directive the department prepared a plan that contains:

- An executive summary describing and quantifying benefits the state is realizing from investments in information technology.
- Information on the state's information technology planning process.
- A status report on the costs and benefits of large information technology projects, including a summary of each project completed in the last

12 months and information on ongoing large information technology projects.

- Information on the department's performance, including a rate comparison and information on the department's performance measures.

The committee learned the department tracks and monitors the cost and the revenue for each service to ensure that one service is not subsidizing another service. The federal government does not allow the department to charge rates that generate revenues in excess of costs; therefore, the department monitors its cash balances and adjusts rates accordingly. The department also monitors what other entities are charging for similar services in an effort to maintain quality services at a fair price. The following is a summary of rate comparisons for the 16 services that generate approximately 73 percent of the department's total revenue:

Service	North Dakota Information Technology Department Rates	South Dakota Bureau of Information Technology Rates	Montana Information Technology Services Division Rates
Systems analyst/programmer	Systems analyst - \$55.60 per hour Programmer - \$51.60 per hour	Software developer - \$46.00 per hour	Agencies hire their own developers as employees or they contract for the service from local providers
Central computer central processing unit (CPU) rate	Batch CPU - \$.70 per second CICS CPU - \$.70 per second ADABAS CPU - \$.75 per second TSO CPU - \$.70 per second	Batch CPU - \$.28 per second CICS CPU - \$.34 per second	Batch CPU - \$1.12 per second CICS CPU - \$.23 per second ADABAS CPU - \$.61 per second TSO CPU - \$1.38 per second
Network access	Device fee - \$28.40 per device per month DSL service - Actual cost (ranges from \$40-\$120) ATM T-1 service - \$840 per month	Device fee - \$21 per device per month User fee - \$54 per user per month DSL service - \$125 per month Frame relay T-1 service - \$495 per month	Device fee - \$72.60 per device per month DSL service - \$360 per month ATM T-1 service - \$1,140 per month
Telephone service	Telephone circuit - \$21 per device per month Speaker function - \$2 per month Display function - \$1 per month Voice mail (unlimited) - \$3 per month	Telephone circuit - \$13 per device per month Speaker function - Actual cost Display function - Actual cost Voice mail - Actual cost	Telephone circuit - \$9 per device per month Speaker function - \$11 per month Display function - \$7 per month Voice mail (three-minute limit) - \$5 per month Voice mail (six-minute limit) - \$8 per month Voice mail (eight-minute limit) - \$10 per month
Long distance	In state - \$.06 per minute Out of state - \$.06 per minute 800 service - \$.10 per minute	In state - \$.07 per minute Out of state - \$.08 per minute 800 service - \$.14 per minute	In state - \$.135 per minute Out of state - \$.135 per minute 800 service - \$.10 per minute

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 policies, standards, and guidelines in a variety of areas and continues to update and adopt new policies, standards, and guidelines as necessary. Policies, standards, and guidelines adopted include guidelines for information technology purchasing, contract guidelines for information technology projects, information technology project management standards, and electronic document management system standards.

In addition the department is in the process of implementing an enterprise architecture for providing an overall plan for the integration of information and services at the design level across agency boundaries. The enterprise architecture is to facilitate interdepartment information sharing and interoperability and does not specify standards for unique department requirements.

INFORMATION TECHNOLOGY INITIATIVES

The committee is authorized to review the activities of the Information Technology Department; and therefore, the committee received information from the department regarding the following information technology initiatives.

Statewide Information Technology 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 or more appropriate for the specific needs of that entity than wide area network services available from the department.

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 early adopter of virtual private network technology. In 1994 the North Dakota Information Network committed as the anchor tenant for U S West Communications (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 State 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.

On March 27, 2000, the department issued a request for proposals for a new ATM T-1 statewide information technology network. The contract proposal was divided into four components, and the department received 12 responses to the four components. The bid awards were:

Contract Proposal Component	Bid Awards
Internet access component	Sprint
Video-bridging component	Qwest
Customer premises equipment component	Corporate Technologies
Transport component	Dakota Carrier Network

The department selected the name StageNet for the new statewide information technology network. "Stage" stands for statewide technology access for government and education. The implementation of the statewide information technology network involves connecting approximately 194 cities and 500 physical locations across the state. The first phase of the implementation, which was completed in December 2000, involved connecting 64 cities and 218 physical locations. The second phase of the implementation, which will be completed by the end of November 2002, involves connecting 202 kindergarten through grade 12 schools and 25 public libraries. The standard access connection to the statewide information technology network is an ATM T-1 connection; however, the department is utilizing the Internet and virtual private network technology for providing information technology services to customers in rural areas.

Regarding the state's e-rate reimbursement funding for the statewide information technology network, the department was required to complete two forms--Form 470 and Form 471--to receive e-rate reimbursement funding for July 1, 2001, through June 30, 2002. Form 470 was properly filed in December 2000, and Form 471 was properly filed electronically on January 18, 2001. The state's paper filing of Form 471, however, was not postmarked by January 18, 2001, and

therefore, the department was notified on October 9, 2001, that its application for e-rate reimbursement funding for fiscal year 2002 was not approved. The department filed an appeal and a request for waiver with the Federal Communications Commission on October 18, 2001, but the department was notified that its appeal was denied. The state's e-rate reimbursement funding for the second year of the 2001-03 biennium was approved, and the department was notified that the reimbursement will fund approximately 63 percent of related costs instead of 50 percent as estimated during the 2001 Legislative Assembly. The department estimates a balance of \$302,837 available on June 30, 2003, due to the higher than anticipated e-rate reimbursement percentage for fiscal year 2003 and the timing of public library connections to the statewide information technology network. The balance available on June 30, 2003, would have been \$1,692,612 if the state would have received e-rate reimbursement funding for both years of the biennium.

Enterprise Resource Planning System - Connect North Dakota

An enterprise resource planning (ERP) system is a multimodule system that includes a relational data base and applications for managing purchasing, inventory, personnel, financial planning, and other management aspects. The ERP system initiative of the Information Technology Department for the state will integrate the core financial and administrative applications of state government, higher education, and public education, including financial management, purchasing, budgeting, human resources, payroll, asset management, and student information functions, into one multisuite software system that will enable all entities to share and use data.

The department issued an ERP system request for proposal on September 18, 2000. The department reviewed the request for proposal responses and selected three finalists--SCT, Oracle, and PeopleSoft. In April 2001 the three finalists submitted their final proposals. Shortly thereafter the request for proposal evaluation process was halted to explore the possibility of entering into a joint venture partnership with Microsoft-Great Plains for development of an ERP system. On October 17, 2001, consideration of the joint venture partnership was discontinued since it would take Microsoft-Great Plains up to 24 months to develop the human resources and financial components of the ERP system and approximately four to six years to complete the ERP system integration. The department returned to the original request for proposal evaluation process and reduced the finalists to two--Oracle and PeopleSoft. Based on a review of final proposals, the department awarded contracts to PeopleSoft for the purchase of an ERP software system and Maximus for implementation consultant services.

The estimated vendor fees and maintenance costs associated with the ERP system for the 2001-03 biennium are approximately \$12.4 million, \$4.9 million more

than the 2001-03 legislative general fund appropriation of \$7.5 million. In order to fund the costs associated with the system, the department received approval from the Budget Section to enter into a finance agreement with PeopleSoft for approximately \$4.9 million. Under the finance agreement, the department paid PeopleSoft \$150,000 on August 15, 2002, and will pay the remainder of \$4,746,053 debt plus related interest of \$117,967 on August 1, 2003. In addition the department, along with other state agencies and higher education institutions, are reallocating funds within their 2001-03 biennium budgets to fund personnel, training, and equipment costs associated with the initiative.

The estimated amount of funding needed for the ERP system initiative for the 2003-05 biennium is approximately \$20 million. Due to the anticipated limited growth in general fund revenue for the 2003-05 biennium, the committee was informed the department and the Governor are considering ways to finance the system, including the issuance of 10-year revenue bonds. If revenue bonds are issued, the estimated debt service requirement would be \$5.2 million per biennium, of which approximately 55 percent would be the responsibility of higher education institutions and approximately 45 percent would be the responsibility of state agencies. The higher education institutions have instituted a student fee for paying their portion of the debt service, and state agencies would be assessed a fee for their portion of the debt service beginning with the 2005-07 biennium. The fee may be assessed agencies on a per FTE employee basis.

The implementation schedule for the ERP system initiative began with a pilot of two selected higher education institutions, Valley City State University and Mayville State University, implementing all three of the ERP system components--financial, human resources, and student administration--and a pilot of one selected state agency, Office of Management and Budget, implementing the financial and human resources components of the system. The implementation of the ERP system is on schedule and on budget with no imminent or anticipated delays identified, and the pilot phases are to be fully functional by April 2003.

In association with the implementation of the ERP system, the Governor sent a letter to all state agencies encouraging them to eliminate redundant systems that can be replaced by the ERP system and to reengineer business processes. The Office of Management and Budget has determined there are approximately 378 information technology systems in state government. Of those 378 systems, the department estimates that 164 systems will be directly impacted by the ERP system, 204 systems will not be impacted by the ERP system, and 10 systems need to be further analyzed.

Also in association with the implementation of the ERP system, the state needed to determine if the existing budget preparation system, the statewide integrated budget and reporting (SIBR) system, should be retained and interfaced with the ERP system or if the budget preparation component of the ERP system

should be implemented for the state. The Office of Management and Budget and the Legislative Council staff reviewed the SIBR system and the ERP system budget preparation module. The SIBR system provides for the publication of the executive budget. The state plans to proceed with the SIBR system and when the time comes to interface the budget preparation system with the ERP system, the state plans to reevaluate both products.

PowerSchool Application Initiative

The PowerSchool application is a web-based student information system for kindergarten through grade 12 that includes features such as student scheduling, student attendance, and student performance. The Information Technology Department serves as the application service provider, and the initiative's cost to school districts is on a per student per year basis. The application may be integrated with the human resources and financial components of the state's ERP system for a complete software suite for kindergarten through grade 12. The Bismarck School District was selected as the pilot school district and implemented the application in August 2001. Eight other school districts have since implemented the application, and 43 school districts are interested in implementing the application.

Geographic Information System Initiative

A geographic information system (GIS) is a system capable of capturing, storing, updating, manipulating, analyzing, and displaying all forms of geographical information. The Information Technology Department received a \$750,000 general fund appropriation for the 2001-03 biennium for a GIS initiative, including the employment of a GIS coordinator position and the creation of a centralized data hub for storing of GIS information. The department also received a federal grant from the Division of Emergency Management and the Federal Emergency Management Agency in the amount of \$451,000 to purchase hardware and software to house GIS data for the Devils Lake region.

The department hired a GIS coordinator to work closely with the GIS Technical Advisory Committee, which was formed by Governor Edward T. Schafer in 1995 and reinstated by Governor John Hoeven in July 2001, to coordinate GIS activities and establish a GIS centralized data hub. The design and development of the centralized data hub began in November 2001, and full implementation of the initiative was completed in October 2002. The benefits of the centralized data hub include a reduction in costs due to agencies not developing individual infrastructures, an increased accessibility to data, and an improved distribution of information to the public. The committee received a demonstration of the functionality of the GIS centralized data hub.

Electronic Document Management System Initiative

An electronic document management system is a collection of technologies that enables functions such as

imaging, document management, forms processing, electronic forms, computer output to laser disk, and workflow. The Information Technology Department received a special funds appropriation of approximately \$1.3 million for the 2001-03 biennium for implementation of an electronic document management system initiative, and the department is working with the Tax Department, Department of Human Services, Department of Transportation, Job Service North Dakota, Secretary of State, and Public Employees Retirement System on electronic document management system projects. The benefits of the initiative include improved access to information, automation of manual tasks, and improved efficiency of information processing.

Criminal Justice Information Sharing Initiative

In the fall of 2000 the state received a \$25,000 grant from the National Governors Association to develop a criminal justice information sharing plan. The plan that was established outlined short-term objectives and the necessary next steps to implement criminal justice information sharing. Subsequently the Information Technology Department was awarded a \$310,000 federal grant from the United States Department of Justice for development of a technical architecture, data standards, and implementation plan necessary for criminal justice information sharing. In September 2001 the department issued a criminal justice information sharing request for proposals, and after receiving oral presentations from three selected finalists, the department signed a contract with MTG Consulting in the amount of \$175,000 for development of a technical architecture, data standards, and implementation plan for criminal justice information sharing. The department also signed a contract with Nexus Innovations in the amount of \$47,500 for project coordination services.

The implementation plan developed by MTG Consulting provides that common components of the initiative should be governed by the Criminal Justice Information Sharing Board and noncommon components should be governed and funded by the respective primary agency. The department provided that for the 2001-03 biennium, related funding appropriated by the 2001 Legislative Assembly will be directed toward building a criminal justice information sharing infrastructure and implementing previously identified projects. One of the department's new FTE positions authorized for the 2001-03 biennium, which was originally intended to be a cybercrime investigator, will be used for a criminal justice information sharing director. The department indicated that possible funding sources for criminal justice information sharing activities in future bienniums include fees from criminal history records checks and concealed weapons permits currently deposited in the general fund and fees collected from nonstate agencies for providing information technology hosting services.

E-Government Initiatives

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 suggested an initiative to be considered for the 2003-05 biennium is the establishment of an enterprise fund that could be used to fund the development of e-government applications that integrate services of several state agencies. An example of such an application would be an on-line "Green Book" application that would allow individuals to complete and submit all of the new business registration forms found in the state's "Green Book" via the Internet. At the present time the forms may be accessed on-line by individuals; however, the forms may not be electronically submitted. The estimated cost for developing electronic submission for all the forms is approximately \$240,000 to \$450,000.

INFORMATION TECHNOLOGY DEPARTMENT COORDINATION OF SERVICES

North Dakota Century Code Section 54-59-12 provides for the review and coordination of information technology between the Information Technology Department, higher education, and political subdivisions. Pursuant to that directive the committee received information from representatives of elementary and secondary education, higher education, the judicial branch, and political subdivisions regarding information technology activities.

Elementary and Secondary Information Technology Initiatives

The committee learned the Educational Technology Council is responsible for coordinating education technology initiatives for elementary and secondary education. The council's education technology initiatives include the merger of Center for Innovation in Instruction and SENDIT Technology Services into EduTech, the funding of six new video consortia and the expansion and enhancement of five existing video consortia, the converting of courses to an on-line format by the Division of Independent Study, and the implementation of a virus protection plan for all kindergarten through grade 12 schools.

Higher Education Information Technology Initiatives

The committee learned the University System plans on developing an information technology plan that focuses on the State Board of Higher Education's strategies and will be integrated into the statewide information technology plan. The committee also learned the University System's existing ODIN library system, PALS, will no longer have system support after June 30, 2004. The University System issued a request for proposals for a library system replacement and has selected three finalists. The estimated cost of a replacement system is \$1,317,000, of which \$900,000 will be funded from the

ODIN libraries and \$417,000 will be requested from the 2003 Legislative Assembly.

Judicial Branch Information Technology Initiatives

The committee learned the judicial branch information technology initiatives for the 2001-03 biennium include the integration of the East Central Judicial District into the unified court information system (UCIS), increasing the number of counties using the UCIS for daily workload processing by 10, from 30 to 40, and the integration of Grand Forks County onto the judicial branch's AS400 system in Bismarck. In addition the judicial branch anticipates completing a review and analysis of an enhanced records management system initiative in the second half of the 2001-03 biennium for possible implementation during the 2003-05 biennium.

Political Subdivisions

The committee learned the Association of Counties has used a 2001-03 biennium general fund appropriation of \$248,000 to provide partial support for the placement of four regional staff in Stark, Williams, Ward, and Walsh Counties to complement the staff in Bismarck and Fargo.

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 March 15 of each even-numbered year. The plan must be prepared based on guidelines developed by the department, must emphasize the long-term strategic information technology goals, objectives, and activities for the current biennium and next two bienniums, and must include a list of information technology assets owned, leased, or employed by the entity. 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 and 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 March 15 of each even-numbered year. Based on the information technology plans, the department must prepare a statewide information technology plan.

The committee received information from the Information Technology Department regarding information technology plans and learned all but two of the plans were received by the March 15, 2002, due date and the remaining two plans were received within a week of the due date. The department will present to the 2003 Legislative Assembly a statewide information technology plan that will communicate a shared vision between state government, higher education, and kindergarten through grade 12; outline strategic initiatives; provide decision-makers with criteria for evaluating technology projects;

and establish goals and strategies that will serve as a basis for more detailed planning efforts.

In addition the department has decided to change the general direction of information technology planning from a tactical focus to a strategic focus. Under the new direction state agencies will be asked to tie information technology planning to business requirements, and the department will emphasize the development of more formalized business cases for major information technology projects and will conduct postproject reviews to document benefits achieved.

MAJOR INFORMATION TECHNOLOGY PROJECTS

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 money appropriated for the project or plan. In addition the committee is directed to review the cost-benefit analysis of any major information technology project, which is defined in statute to be an executive or judicial branch agency project with a cost of \$250,000 or more in one biennium or a total cost of \$500,000 or more or a higher education project that impacts the statewide wide area network, impacts the statewide library system, or is an administrative project.

The committee reviewed quarterly reports of major projects compiled by the Information Technology Department and received information regarding specific projects, including the Health Insurance Portability and Accountability Act (HIPAA), the Department of Public Instruction's student data analysis and reporting system project, the State Radio Communication's statewide plan for public safety communications, and the Job Service North Dakota NDWORKS project. The committee did not recommend the suspension of any project. However, the committee did express concern with respect to the motor vehicle registration and titling system of the Department of Transportation.

The committee learned in regard to the motor vehicle registration and titling system that the Department of Transportation awarded the development contract for the system to Unisys with Revenue Systems, Inc. (RSI) as the application subcontractor. Unisys delivered the finished product in October 2000. In June 2001 as a followup to the implementation of the system, the department entered into a 13-month service agreement in the amount of \$275,000 with RSI. Under the agreement RSI was to complete system maintenance and provide system support and maintenance training to the Information Technology Department. The Department of Transportation was notified by RSI in August 2001 that it was unable to complete its contractual obligation as a result of bankruptcy.

As a result of the inability of RSI to complete contract requirements, the Department of Transportation accelerated the process of the Information Technology

Department becoming the system's primary support provider. The Information Technology Department contracted with four former RSI employees to complete system maintenance and to train Information Technology Department employees.

The committee asked the chairman of the Legislative Council to request the Attorney General's office to review the related contracts, RSI's inability to complete contract obligations and the related state costs, and to take appropriate action to recover related state costs. The Department of Transportation along with the Attorney General's office worked to recover the additional costs incurred, which totaled approximately \$200,000. The Attorney General's office demanded RSI repay costs associated with the unfulfilled service agreement. The Attorney General's office received a response from RSI stating it was sorry for the cost and inconvenience of the situation; however, it would be unable to provide the state with any repayment of costs. The department negotiated with Unisys for reimbursement of additional costs incurred by the department relating to system warranty services performed under the contract with former RSI employees and received a payment from Unisys of \$80,000.

911 TELEPHONE SYSTEM STANDARDS AND GUIDELINES

The committee was assigned the responsibility to receive a report from State Radio Communications on any recommended changes in 911 telephone system standards and guidelines pursuant to NDCC Section 57-40.6-11.

Pursuant to that directive the committee received information from State Radio Communications and learned there are no recommended changes to the 911 telephone system standards and guidelines.

PUBLIC SAFETY ANSWERING POINTS COORDINATING COMMITTEE

The committee was assigned the responsibility to receive a report from the Public Safety Answering Points Coordinating Committee on city and county fees on telephone exchange access service and wireless service pursuant to NDCC Section 57-40.6-12.

Pursuant to that directive the committee received information from the Public Safety Answering Points Coordinating Committee and learned the 2001 Legislative Assembly enacted legislation to establish a Public Safety Answering Points Coordinating Committee responsible for reporting information on income and expenditures of the emergency services communications systems in the state. Operating costs for emergency services communications systems for calendar year 2001 were approximately \$9.5 million, of which \$3.3 million was paid from revenue from wireline 911 fees and \$6.2 million was paid from other sources, including county property taxes. The income and expenses for calendar year 2002 are expected to change slightly with the addition of the collection of

wireless 911 fees authorized by the 2001 Legislative Assembly.

DEPARTMENT OF PUBLIC INSTRUCTION - PURSUIT OF GRANT FUNDS

The committee was assigned the responsibility to receive reports from the Department of Public Instruction on the department's pursuit of grant funds during the 2001-03 biennium for projects relating to the use of technology in elementary and secondary education in accordance with Section 10 of 2001 Senate Bill No. 2251.

Pursuant to that directive the committee received information from the Department of Public Instruction and learned the department displays grant information received from grant newsletters, educational and technology periodicals, and listservs on its web site and notifies school districts each time the information is updated. The department, in cooperation with the State Board for Vocational and Technical Education, received 10 information technology stations from the Beaumont Foundation. The information technology stations include wireless Toshiba laptops, digital projectors, digital cameras, and printers and were distributed to high-need school districts in the state through an application process. The department also forwarded information regarding implementing the Intel Corporation's Teach to the Future program to EduTech.

OTHER INFORMATION

The committee received information from a representative of the State Board for Vocational and Technical Education regarding the use of funding appropriated by the 2001 Legislative Assembly for information technology technical education. The committee learned the 2001 Legislative Assembly provided a \$422,300 general fund appropriation to the State Board for Vocational and Technical Education for information technology technical education. The funds were to be spent based on an agreement between ExplorNet, a nonprofit organization based in North Carolina, and the State Board for Vocational and Technical Education. The agreement provided for \$168,300 to be given directly to ExplorNet for administrative uses and \$254,000 to be granted to North Dakota schools that started ExplorNet programs.

The committee learned as of July 12, 2002, ExplorNet does not have employees in the state. The committee encouraged the State Board for Vocational and Technical Education to request the return of the funding provided to ExplorNet for administrative uses, and the committee requested the Attorney General's office to review the agreement between the State Board for Vocational and Technical Education and ExplorNet and protect the state's interest. The State Board for Vocational and Technical Education has requested the return of \$84,000 of the administrative funding that was to be used for the second year of the 2001-03 biennium. Of the \$254,000 for North Dakota schools that started ExplorNet programs, \$122,500 was distributed to schools during the first year of the 2001-03 biennium and

\$131,500 has been obligated to schools for the second year of the biennium.

COMMITTEE RECOMMENDATIONS

The committee recommends House Bill No. 1043 relating to the powers and duties of the Information Technology Department, information technology plans, and the State Information Technology Advisory Committee. The bill changes the reference for the responsibility of establishing a statewide forms management program from the Office of Management and Budget to the Information Technology Department, allows the department to purchase, finance the purchase, or lease equipment, software, or implementation services only to the extent the purchase amount does not exceed 10 percent of the appropriation for the department for that biennium, changes the due date for information technology plans from March 15 to July 15, and repeals NDCC Section 54-59-07 relating to the State Information Technology Advisory Committee.

The committee recommends Senate Bill No. 2038 relating to an exemption of security-related records from the open records requirements. The bill creates a new section to NDCC Chapter 44-04 providing that any portion of a record containing plans, security codes, passwords, combinations, or other security-related data used to protect electronic information and government property and to prevent access to computers, computer systems, or computer or telecommunications networks is exempt from the open records requirements.

The committee recommends Senate Bill No. 2039 to exempt the Information Technology Department from the administrative hearing process. The bill provides that the policies, standards, and guidelines adopted by the department under NDCC Chapter 54-59 are not considered rules under the Administrative Agencies Practice Act.

The committee recommends Senate Bill No. 2040 relating to the Educational Technology Council as the governing entity of the Division of Independent Study. The bill changes the entity responsible for the Division of

Independent Study's curriculum approval from the State Board of Public School Education to the Superintendent of Public Instruction, provides that the director of the Division of Independent Study is to carry out the administration of the division in a manner approved by the Educational Technology Council instead of the State Board of Public School Education, and provides that the Department of Public Instruction is responsible for ensuring the Division of Independent Study courses meet state content standards.

The committee recommends Senate Bill No. 2041 relating to the criminal justice information sharing initiative. The bill creates a new section to the North Dakota Century Code establishing a criminal justice information sharing board. The bill increases the fee for a record check from \$20 to \$25, provides that 80 percent of all fees collected must be deposited in a criminal justice information sharing fund that, subject to legislative appropriations, is available to the Information Technology Department for criminal justice information sharing activities, and provides that the remaining 20 percent of the fees must be deposited in the Attorney General's operating fund. The bill also provides that \$10 of the \$25 fee for a concealed weapons license must be deposited into the criminal justice information sharing fund instead of the general fund.

The committee recommends Senate Bill No. 2042 relating to exceptions from the definition of telecommunications service and the entities allowed use of the statewide information technology network. The bill provides that higher education institutions may not incur costs for the services provided to others when the services are provided over institution telecommunications infrastructure. The bill also provides that the private sector may be allowed use of kindergarten through grade 12 entities and higher education institutions' interactive videoconferencing services if videoconferencing services are not available from private sector providers, the offering of videoconferencing services should not inhibit future private sector service, and educational and governmental users are given priority in the use of the videoconferencing services.

JUDICIARY A COMMITTEE

The Judiciary A Committee was assigned three studies. House Concurrent Resolution No. 3017 directed a study of the method of providing legal representation for indigent criminal defendants and the feasibility and desirability of establishing a public defender system. Section 7 of Senate Bill No. 2002 directed a study of the implementation of clerk of court unification, including a review of the delivery of services by clerks of court and the responsibility for restitution collection and enforcement activities. By Legislative Council directive, the study was limited to a study of the responsibility of clerks of court for restitution collection and enforcement activities. Senate Concurrent Resolution No. 4033 directed a study of the commitment procedures for individuals with mental illness. 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 also assigned to the committee the responsibility for statutory and constitutional revision.

Committee members were Representatives Merle Boucher (Chairman), Duane DeKrey, Bruce Eckre, April Fairfield, G. Jane Gunter, Joyce Kingsbury, Lawrence R. Klemm, William E. Kretschmar, John Mahoney, and John M. Warner and Senators Deb Mathern, Carolyn Nelson, John T. Traynor, and Darlene Watne.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2002. The Council accepted the report for submission to the 58th Legislative Assembly.

INDIGENT DEFENSE STUDY

The testimony received during the hearings on House Concurrent Resolution No. 3017 indicated it has been over 25 years since the Legislative Assembly considered the establishment of a different method of providing indigent defense services and that the dynamics and requirements of providing these services have changed considerably since that time.

Background

The Sixth Amendment to the United States Constitution guarantees to all persons accused of a crime the right to counsel in their defense. The United States Supreme Court has interpreted the Sixth Amendment to require each state to provide counsel to any person accused of a crime before that person can be sentenced to jail or prison if that person cannot afford to hire an attorney. These decisions include *Gideon v. Wainwright*, 372 U.S. 335 (1963) in which the Supreme Court interpreted the Sixth and 14th Amendments as requiring states to provide counsel to all indigents accused of a crime in their jurisdictions; *Argersinger v. Hamlin*, 407 U.S. 25 (1972) in which the Supreme Court extended *Gideon* to include petty offenses that carried a possible sentence of incarceration; and *In re Gault*, 387 U.S. 1 (1967) in which the Supreme Court extended the

right to counsel to include all juveniles involved in delinquency proceedings and facing possible incarceration. The states have responded to the Court's mandate in these landmark decisions by developing a variety of systems in which indigent defense services are provided.

Some states and localities have created public defender programs, while others rely on the private bar to accept court appointments. In most states the right to counsel has been expanded by legislation, case law, and state constitutional provisions. This expansion at the state level has contributed to the diversity of systems around the country.

Cost is usually the primary factor determining the type of indigent defense system a state or county adopts. Responding to increased costs, increased caseloads, and litigation challenging the programs in place, many states have refined their indigent defense programs in recent years.

Methods for Providing Counsel to Indigent Defendants

There are three primary models for providing representation to those accused of crimes and unable to afford counsel--assigned counsel, contract, and public defender programs. The assigned counsel model involves the assignment of indigent criminal cases to private attorneys on either a systematic or an ad hoc basis. The contract model involves a private contract with an attorney, a group of attorneys, a bar association, or a private nonprofit organization to provide representation in some or all of the indigent cases in the jurisdiction. The public defender model involves a public or private nonprofit organization with full-time or part-time staff attorneys and support personnel. While there are many variations among public defender programs, the defining characteristic is the employment of staff attorneys to provide representation.

From these three models for the appointment of counsel, states have developed indigent defense delivery systems, many of which employ some combination of these types. For example, even in states with a statewide public defender system, private attorneys will be appointed to cases that present a conflict of interest and in some instances to alleviate burdensome caseloads. In other states in which there is less uniformity, there may be contract counsel in one county, assigned counsel in a second county, and a public defender office in yet a third county.

Systems Used by States to Provide Indigent Defense Services

The states have developed a wide range of systems to respond to the United States Supreme Court's mandate on the right to counsel. Some states organize their systems on a statewide basis, others by county, and still others by region or judicial district. Some states have passed on to the counties their responsibility to select a system from the various options.

More than one-half of the states have organized some form of a statewide indigent defense program. These statewide systems have varying degrees of responsibility and oversight, but they share the common element of providing some degree of uniformity to the delivery of indigent defense services statewide. Sixteen states operate indigent defense programs utilizing a state public defender with full authority for the provision of defense services statewide--Alaska, Colorado, Connecticut, Delaware, Hawaii, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, Rhode Island, Vermont, Wisconsin, and Wyoming.

Nine of the 16 states with a statewide public defender have a commission that oversees the program, although the commissions have varying degrees of involvement and responsibility.

State commissions are found both in states with statewide public defender systems and in states that organize their indigent defense systems in a way that combines aspects of state oversight with substantial local control. In these systems a state commission or board often provides overall direction and may develop standards and guidelines for the operation of local programs. The principal feature of these systems is the provision of central, uniform policy across the state to ensure accountability and quality. Twelve states have indigent defense commissions setting guidelines for the provision of indigent defense services statewide--Arkansas, Georgia, Indiana, Kansas, Kentucky, Louisiana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, and Tennessee.

In contrast to statewide systems, other states delegate the responsibility to organize and operate an indigent defense system to the individual county or group of counties comprising a judicial district. The decision regarding what type of system to use may be made by the county governing body, the local bar association, the local judges, or a combination of these groups. Under this system there is little or no programmatic oversight at the state level; there is no state board, commission, or administrator. Fourteen states follow this pattern--Alabama, Arizona, California, Idaho, Maine, Michigan, Mississippi, Montana, New York, North Carolina, South Dakota, Texas, Utah, and Washington.

Eight states, plus the District of Columbia, have indigent defense systems that do not fit neatly into the above three categories. For example, in the District of Columbia a private nonprofit public defender organization, which is overseen by a board of trustees, provides representation in a portion of the cases, while private, court-appointed attorneys provide counsel in all other cases. In Nevada there are two large county public defender programs in Reno and Las Vegas. The rest of the state is served by the Nevada State Public Defender at the option of each county. If the county opts out of the state public defender system, it must establish its own program and pay for it totally out of county funds.

North Dakota Indigent Defense

The right to counsel in North Dakota is established by North Dakota Supreme Court rules. Rule 44 of the North Dakota Rules of Criminal Procedure, Right to and Assignment of Counsel, provides, in part:

Absent a knowing and intelligent waiver, every indigent defendant is entitled to have counsel appointed at public expense to represent the defendant at every stage of the proceedings from initial appearance before a magistrate through appeal in the courts of this state in all felony cases. Absent a knowing and intelligent waiver, every indigent defendant is entitled to have counsel appointed at public expense to represent the defendant at every stage of the proceedings from initial appearance before a magistrate through appeal in the courts of this state in all nonfelony cases unless the magistrate has determined that sentence upon conviction will not include imprisonment.

In North Dakota indigent defense services are provided primarily by attorneys working under contract with judges. Court-appointed attorneys handle those cases in which the contract attorneys have a conflict of interest. North Dakota is the only state to use a pure contract system for providing indigent defense services. North Dakota's indigent defense system is administered through the judiciary and is almost 100 percent state-funded. The one exception is that each of the 53 counties is responsible for funding assigned counsel representation of indigent defendants facing mental health commitment proceedings or proceedings for the commitment of sexually dangerous individuals.

The North Dakota Legal Counsel for Indigents Commission is the statewide indigent defense oversight commission responsible for reviewing indigent defense caseload data, preparing recommended indigent defense budgets, and adopting assigned counsel eligibility qualifications. The commission is made up of eight members who are appointed by the Chief Justice of the North Dakota Supreme Court from nominations by judges, the State Bar Association, the Attorney General, and the Legislative Assembly.

Testimony and Committee Considerations

The committee received extensive testimony and information from the Supreme Court, district court judges, attorneys currently and formerly involved in the indigent defense contract process, state's attorneys, and the North Dakota Association of Counties regarding issues facing the state's indigent defense system. The committee's consideration centered on four issues--concerns about the current indigent defense system; indigent defense and prosecution costs; state-funded indigent defense; and the establishment of a public defender system.

Concerns About the Current Indigent Defense System

The committee received testimony from the Supreme Court and several district judges that the current system of appointing and contracting with attorneys by the judiciary raises conflict of interest concerns. The current system of providing indigent defense is administered at the local level by the seven presiding district judges who contract with attorneys for legal services. According to the testimony the current system requires the judge, who is supposed to be the arbiter, to be in a position to award contracts and select counsel for the defendant. The testimony indicated that the conflict of interest problem would be difficult to resolve unless an independent agency were in charge of the indigent defense program.

Members of the judiciary also expressed concern over the number of attorneys in the state who are willing to contract with the state to provide the indigent defense services. The committee received testimony that judicial districts in rural areas of the state, particularly the northwest, are experiencing a shortage of attorneys who are willing to provide indigent defense services. It was reported that the lack of attorneys willing to do indigent defense work in these counties will result in the need to hire outside counsel for some cases.

Further, members of the judiciary expressed concerns over the qualifications of some of the attorneys who are providing the indigent defense services. It was reported that overall, the contract attorneys in the state are doing good work, but there are instances in which the quality of counsel is a concern. According to the testimony, some attorneys will do contract indigent defense work for the first few years out of law school, but once an attorney establishes a law practice, the attorney no longer wants to do criminal defense work. There are no minimum qualifications established for contract attorneys, but according to the testimony, when a judge receives offers from area attorneys, the judge will assess each attorney's qualifications and may not contract with a particular attorney because of the attorney's poor qualifications or lack of qualifications. Contracts are awarded on the basis of who will best provide the services, but in many cases the pool of attorneys willing to do the contract work is small.

The committee also received testimony from a number of attorneys currently and formerly involved in the indigent defense contract process. According to the testimony, the number of indigent defense cases is on the rise and more and more of the contract attorneys' time is required for contract cases. The attorneys cited heavy caseload and inadequate compensation as issues that need to be addressed in the current system. One attorney estimated she spent approximately 50 hours per month on the 25 cases she had been assigned. According to the testimony, the hourly rate for providing those 50 hours of service was less than \$35 per hour. Another attorney testified that if an attorney spends more than two hours per day on contract clients, the attorney is losing money. According to the testimony, a law office may have overhead costs in excess of \$35 per hour. It

was also noted the heavy caseload of a contract attorney limits the attorney's availability to take on other cases and earn supplemental income, especially in a sole practitioner's office. Another attorney reported being assigned certain cases, such as murder cases, can be especially costly to an attorney because the attorney does not have the time to work on cases for clients who are not indigent.

To address the issue of the judiciary's conflict of interest in contracting with and assigning attorneys, the committee considered a bill draft that transferred from the judicial branch to the Office of Administrative Hearings the responsibility of contracting with and assigning attorneys to provide indigent defense services. The bill draft required the Office of Administrative Hearings to establish and implement a process of contracting with licensed attorneys who are willing to provide legal services to indigent persons. The bill draft also provided that of the money deposited in the indigent defense administration fund, 50 percent would be appropriated to the Office of Administrative Hearings for the administration of the indigent defense system and 50 percent would be appropriated to the judicial branch to be used for the collection of those indigent defense costs required to be reimbursed. Testimony received from the Office of Administrative Hearings indicated the proposed legislation would take a function arguably belonging to the judicial branch of government and place it in an executive branch agency. According to the testimony, the Office of Administrative Hearings would have the same or a similar conflict of interest problem because at least some of the attorneys with whom the Office of Administrative Hearings would be contracting to provide services will also be appearing before administrative law judges as counsel representing clients in administrative agency hearings. It was argued that although the Office of Administrative Hearings has experience in contracting with temporary administrative law judges to provide hearing officers, the office has no experience in administering lawyers under this type of program. Several committee members indicated the bill draft would work to solve the conflict of interest problems that currently exist. Another committee member expressed concern that the bill draft does not resolve the problem of inadequate compensation for the contract attorneys.

Indigent Defense and Prosecution Costs

The Supreme Court provided information to the committee regarding the cost of providing indigent defense in the state and the number of indigent defense assignments. The judicial branch's 2001-03 budget for indigent defense services in the state is \$4,055,670. According to the testimony, the target wage for contract attorneys is \$65 per hour. It was reported that during the 1999-2001 biennium, 13,957 indigent defense assignments were made in the state.

In other testimony regarding the costs of funding indigent defense, it was reported that during the 1999-2001 biennium, approximately 3,835 indigent defense appointments were made in the South Central Judicial District.

With a budget of \$875,000 for that district, the average amount per case was \$220.

The committee also received information on the costs attributable to prosecuting defendants. It was reported that counties do not keep specific numbers on the costs of prosecution, but approximately 60 to 80 percent of a county state's attorney's budget is spent on criminal cases, and 20 to 40 percent is spent on civil actions and other duties. The committee was also provided with information on the estimated costs of prosecuting an actual murder case that occurred in the state. According to the testimony, state's attorneys do not keep track of the hours spent on each criminal case, but to arrive at an estimate in this case, files were reviewed, major tasks identified, and an estimate of how much time was spent on each task was done. For this particular case, the estimated prosecution cost was \$13,379.08. According to the testimony, this figure did not include office space, equipment, or supply costs. Testimony received from the attorney who provided the indigent defense services for the murder case estimated that if this client had been a paying client and he had billed his client by the hour, the case would have cost an estimated \$20,000 to \$25,000. According to the attorney's testimony, the state's attorneys have technology, law enforcement resources, and other sources of information at their disposal which are not available to the contract attorneys.

The committee also received testimony from an attorney who represented an indigent client in a double murder case. According to the testimony, the prosecution had the resources to fly in witnesses and Federal Bureau of Investigation experts and had the state crime laboratory at its disposal. The attorney testified that two full-time state's attorneys tried the case with a third state's attorney rotating with the other two. According to the testimony, as an indigent defense attorney he was compensated \$2,500 to represent the defendant. It was argued that defendants have a constitutional right to an adequate and competent defense and that the attorneys providing that service need to be adequately compensated. According to the testimony, the federal system pays indigent defense attorneys \$90 per hour, and under the state's current system, defendants are being represented by the lowest bidder.

Another indigent defense attorney pointed out there is no comparison between the resources of state's attorneys when prosecuting indigent defendants and the resources of indigent defense attorneys when defending the indigent defendant.

State-Funded Indigent Defense

North Dakota's indigent defense system is administered through the judiciary. As part of the court unification process, although the payment of indigent defense for criminal cases became a state obligation, each of the 53 counties is responsible for funding assigned counsel representation of indigents who are facing mental health commitment proceedings or proceedings for the commitment of sexually dangerous individuals. The county is also responsible for costs associated with the

appointment of guardians ad litem for indigents. The committee received information that the counties spend an estimated \$200,000 to \$300,000 per biennium on indigent defense services. In 2001 Cass County spent \$16,000 on indigent defense and \$13,500 on guardian ad litem services; Burleigh County spent \$35,000 on indigent defense and \$10,000 on guardian ad litem services; Grand Forks County spent \$3,942 on indigent defense and \$12,273 on guardian ad litem services; and Stutsman County spent \$15,254 on indigent defense and \$5,000 on guardian ad litem services.

The committee considered a bill draft that provided that the state rather than the counties is responsible for paying the cost of indigent defense for mental illness commitment proceedings, sexual predator commitment proceedings, and for guardian ad litem costs. Testimony in support of the bill draft indicated that not making these indigent defense costs a state responsibility may have been an oversight at the time court unification was implemented. Other testimony indicated that currently these three types of indigent defense services are being provided by the attorneys with whom the state has contracted, but the costs of services are paid by the county. There was no testimony in opposition to the bill draft.

Establishment of a Public Defender System

The committee received testimony regarding the implementation of a public defender office in the state. According to the testimony, a public defender program is a public or private nonprofit organization staffed by full-time or part-time attorneys and is designated by a given jurisdiction to provide representation to indigent defendants in criminal cases. While there are many variations among public defender programs, the defining characteristic is the employment of staff attorneys to provide representation.

The committee received testimony in support of and in opposition to the establishment of a public defender system in the state. Testimony in support of a public defender system indicated the system would be a separate, freestanding office, thus eliminating conflict of interest concerns. It was argued that the state needs a system that does not include the involvement of district judges in the process. Other testimony in support of a public defender system indicated a public defense system is operated like a law office and a business, with the more experienced attorneys assigned the more difficult cases and the less-experienced attorneys assigned the less-complicated cases. It was argued that under the current system the better attorneys are not rewarded. According to the testimony, a public defender office would require the hiring of an executive director, regional directors, and staff attorneys. Several attorneys who are currently or formerly involved in the indigent defense contract process also testified in support of the establishment of a public defender program. According to the testimony, a public defender would have a greater commitment to public defense and would not have other nonindigent cases to handle. In addition, it was argued

that a public defender would be provided with a support staff. This would eliminate the duplication of expenses for rent, support services, and other overhead costs.

Testimony in opposition to a public defender program indicated the current system of awarding contracts and providing indigent defense is working well. According to the testimony, a public defender program would be considerably more expensive to the state than the current system and would create another agency of government. Other testimony in opposition to a public defender program indicated there are a number of ways the current system can be improved without replacing it with a more costly process. It was noted there are ways the application and eligibility process could be improved. Testimony in opposition also indicated that even if the state implemented a public defender program, there will still be conflict of interest instances in which there will be a need to hire outside counsel. It also was noted that the problem of a shortage of attorneys willing to do indigent defense work would not be resolved by establishing a public defender program. According to the testimony, being an indigent defense attorney is a "burn-out" job, and therefore, it may be difficult to recruit attorneys who are willing to work as full-time public defenders. As a part of its study of a public defender program, the committee also reviewed the Uniform Model Public Defender Act.

Several committee members indicated that at some point the state should consider moving to a public defender system, but that remaining court consolidation and clerk of court consolidation issues should be settled first. One committee member suggested the committee may want a continuation of the indigent defense study in the next interim.

The committee considered a resolution that directed the Legislative Council to study the state's method of providing legal representation for indigent persons and the feasibility and desirability of establishing a public defender system. Committee discussion on the resolution indicated the issues raised during this study should be further studied and monitored.

Recommendations

The committee recommends House Bill No. 1044 to transfer from the judicial branch to the Office of Administrative Hearings the responsibility of contracting with and assigning attorneys to provide indigent defense services. The bill requires the Office of Administrative Hearings to establish and implement a process of contracting with and assigning licensed attorneys who are willing to provide legal services to indigent persons. The bill also provides that of the money deposited in the indigent defense administration fund, 50 percent would be appropriated to the Office of Administrative Hearings for the administration of the indigent defense system and 50 percent would be appropriated to the judicial branch to be used for the collection of those indigent defense costs required to be reimbursed.

The committee recommends House Bill No. 1045 to provide that the state rather than the counties is

responsible for paying for the costs of providing indigent defense for mental illness commitment proceedings, sexual predator commitment proceedings, and for guardian ad litem costs.

The committee recommends House Concurrent Resolution No. 3004 to direct a Legislative Council study of the state's method of providing legal representation for indigent persons and the feasibility and desirability of establishing a public defender system.

CLERK OF COURT AND COLLECTION OF RESTITUTION STUDY

Background

Court Unification

In 1991 the Legislative Assembly unified the court system through elimination of county courts and the creation of 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. At the end of 2000 the final judgeship was eliminated and the number of district judgeships was reduced to 42.

Office of Clerk of District Court

Historically, the clerks of court have been elected county officials whose salaries have been set by state law but were paid by the counties. 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 clerks 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 of 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 to provide clerk of district court services 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 determined 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 state 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.

Restitution Collection Activities

North Dakota Century Code Section 12.1-32-08 establishes the procedure by which a court may order that a defendant make restitution to the victim or other recipient as determined by the court. Restitution may be ordered by the court in a wide variety of cases in which the victim of a criminal offense suffers monetary loss or damage to property. The most common restitution collection is to recover financial loss associated with bad checks. The statute is silent regarding who is responsible for restitution enforcement and collection activities but does provide that an order for restitution may be filed, transcribed, and enforced by the person entitled to the restitution in the same manner as civil judgments. Historically, restitution has most often been monitored and collected by clerks of court. In some counties, however, restitution collection activities are managed exclusively by the state's attorney's office. In other counties there has been a shared responsibility between the two county offices. These different divisions of labor regarding collection of restitution have evolved over time in response to local practices, budget considerations, and personnel factors.

In 1999 the Supreme Court's Court Services Administration Committee surveyed clerks of district court to determine the clerks' level of activity in several areas. With respect to restitution, the vast majority of clerks indicated some or all court-ordered restitution was monitored, collected, and disbursed within their offices. However within these counties there was a difference with respect to handling restitution in particular kinds of cases. In some counties clerks of district court handle restitution only in misdemeanor cases, while the state's attorney's offices handle restitution in felony cases. In some counties it is the opposite. And in some counties, typically smaller counties with part-time state's attorneys, the clerks of district court handle all restitution. In the

three counties with the most activity (Cass, Burleigh, and Grand Forks), restitution collection and enforcement are the exclusive responsibility of the state's attorney's offices.

A more recent assessment of the 11 state-funded clerk of court offices indicated that, as previously noted, the state's attorney's offices monitor, collect, and disburse restitution in the three counties with the proportionately highest criminal caseload (Cass, Burleigh, and Grand Forks). Of the remaining eight counties, restitution in felony and misdemeanor cases is handled by the clerks' office in seven counties (Morton, Ramsey, Richland, Stark, Stutsman, Walsh, and Williams). The clerk's office in Ward County handles restitution only in felony cases.

Testimony and Committee Considerations

The committee received testimony and reviewed information submitted by the Supreme Court regarding court unification, the state funding of clerk of district court services, and the responsibility for restitution collection and enforcement activities. Although the committee received information and updates on court unification and the state funding of clerk of district court services, the primary focus of the committee was on the issue of whether restitution collection is the responsibility of the clerk of district court or the state's attorney. The committee's considerations centered on three issues--court unification and state funding of clerk of district court services, responsibility for restitution collection, and restitution collection efforts.

Court Unification and State Funding of Clerk of District Court Services

The committee received testimony from the Supreme Court regarding the implementation of the 1999 legislation that provided for state funding of clerk of district court services. Of the 53 counties, Oliver, Billings, and Sioux opted to fund their own clerk of court services; 11 counties opted to have the state provide clerk of court services; 38 counties opted to contract with the state; and one county, Sheridan, did not make an election by the April 1, 2000, deadline and, therefore, is providing clerk of court services at its own expense. The Supreme Court reported the new system is working reasonably well due in large part to the personnel in the counties and in the State Court Administrator's Office and to the strong work ethic of the people of the state. The Supreme Court also reported there were not any county employees who lost all their benefits in the transition from county to state employment.

According to the testimony the recommendations as to how to handle the conversion of benefits from county employees to state employees were made by a clerks of district court committee. The Supreme Court reported it made the decision to assume all sick leave that employees had on the county books as of April 1, 2001, and all annual leave, up to 240 hours, on employee records with the counties was assumed by the state and credited to the account of each employee. All new state

employees were given credit for time worked in county clerk of court offices for purposes of annual and sick leave accrual. Because clerks of district court were elected officials and unable to accrue annual leave or sick leave, the Supreme Court gave a one-time credit in order to give these employees a fair start. Clerks of district court with up to nine years of service were given 80 hours of sick leave and 80 hours of annual leave and clerks with more than nine years of service were given 160 hours of sick leave and 160 hours of annual leave. Regarding salary, all clerks of district court and deputies were brought into the state payroll at the salary they had when they left county employment. The salaries of employees who were paid more than their new state position authorized were frozen until their positions catch up with their current pay. According to the testimony the majority of clerk of court employees received an increase in pay when they became state employees, particularly when taking into consideration the increases in benefits. One county auditor reported that the county gave clerk of district court office employees the option to "cash-out" benefits. The committee received extensive information regarding the salaries of the county employees who became state employees.

Regarding the number of district judgeships in the state, the Supreme Court reported a weighted caseload study indicated that 42 judgeships are adequate, but problems arise in the statewide distribution of those positions. According to the testimony the issue of the number of judges in the state is similar to problems faced by the schools. All children need an education, but there are not enough children in some parts of the state to justify operating a school. The same applies to the courts. Some areas of the state are not populated enough for a judgeship position, but judicial services are still needed. According to the testimony if there were growth in the state's economy and population, there would be a need for more judges.

The committee makes no recommendation regarding the number of judgeships or the state-funded clerk of district court offices.

Responsibility for Restitution Collection

The committee received testimony from the Supreme Court that there is considerable disparity among the counties regarding who is responsible for collecting restitution. According to the testimony, the Supreme Court does not have a strong recommendation regarding the responsibility for restitution collection, but if the Legislative Assembly decides the duty is to be performed by the clerks of district court, additional FTEs will be needed in the state-run offices, and additional compensation to counties would be needed in the contract counties. According to the testimony the question of whether restitution collection should be done by the clerk of district court or the state's attorney is a political issue. In Burleigh, Cass, and Grand Forks Counties the collection of restitution has traditionally been the responsibility of the state's attorney. In Ward County the state's attorney is responsible for restitution collection for felony cases,

and the clerk of district court is responsible for collection of restitution in all other cases. In all other counties, restitution is being collected by the clerk of district court offices. The North Dakota Century Code is silent regarding who is responsible for the collection of restitution.

According to testimony from the North Dakota Association of Counties, if the Legislative Assembly decides that restitution is a county responsibility, the cost to each county, depending on size and caseload, would range from \$10,000 to \$45,000 per year. Regarding the current costs of providing restitution services in the four counties in which the state's attorney's office provides this service, it was reported that Cass County employs two FTEs at a cost of \$57,369; Grand Forks County has two FTEs at a cost of approximately \$60,000; Ward County has a .9 FTE at a cost of \$30,911; and Burleigh County has a .75 FTE at a cost of \$20,673. According to the testimony state's attorneys would like to continue to provide the restitution collection service, but if the state pays for the clerk of district court to provide the services in some counties, the counties will want money for the counties to provide the service.

The committee also received extensive testimony regarding the responsibility for restitution collection from clerks of district court and state's attorneys. According to a clerk from a county in which restitution is collected by the clerk of district court, the state's attorney in that county has limited office space. According to the testimony if restitution collection became the duty of the state's attorney, there would not be any physical space for another person to work in that office. It was argued that two offices would be too cumbersome and too confusing to the person paying restitution. Further, it was argued that employees in the clerk's office are well-trained in restitution collection, and it would be more costly for the counties if state's attorneys were required to collect restitution.

According to testimony from a state's attorney, county state's attorneys' offices are not set up for the collection of money, and those counties are not staffed nor physically able to have a system to collect money without major changes that would necessitate expenditures. It was argued that if the task of collecting restitution became the responsibility of state's attorneys, it is likely that smaller jurisdictions with limited resources and staff would not make the effort to collect restitution. Because it is discretionary for a state's attorney to ask for restitution, it could become a more standard practice to tell a victim to seek a civil judgment if a prosecutor knows he or she does not have the resources available to handle a restitution case. Finally, it was argued that adding the duty of restitution collection to state's attorneys would be unfair to the counties and their budgets.

Several committee members expressed a concern that the North Dakota Century Code is silent on the issue regarding who has the responsibility for the collection of restitution and that a bill draft to codify the status quo may be helpful. The committee considered a bill draft that would have authorized county commissioners to

designate either the state's attorney or the county-employed clerk of district court as the office responsible for the collection of restitution. Testimony in opposition to the bill draft indicated the bill draft would not cover those counties in which the clerks of district court are state employees and in which the clerks are responsible for the collection of restitution. In addition the testimony indicated the bill draft could result in the shifting of the cost of restitution collection from the state to the county. It was argued that the language in the bill draft may give the impression that restitution collection is a county responsibility. It was suggested that a better solution would be to codify the intent statement contained in Section 6 of 2001 Senate Bill No. 2002. Section 6 provided that "[i]t is the intent of the legislative assembly that the county and state offices performing restitution collection and enforcement activities as of April 1, 2001, continue to perform those activities until June 30, 2003."

The committee considered a bill draft that provided that those county and state offices performing restitution collection and enforcement activities as of April 1, 2001, are to continue to perform those activities. Testimony in support of the bill draft indicated the bill draft would ensure that the structure regarding the collection of restitution which is currently in place would be retained.

Restitution Collection Efforts

During the course of its study regarding who has the responsibility for the collection of restitution, concerns were raised about the success of the restitution collection efforts being made by the state's attorneys and clerks of district court and whether the amount owed is being collected, especially in the case of insufficient funds checks. Testimony received from collection agencies indicated a professional collection service could be used to assist state government in collecting accounts that remain delinquent. According to the testimony collection agencies have a vast knowledge of collection techniques, technology, and compliance issues. It was reported that several state agencies use collection agencies for the collection of delinquent accounts. A member of the committee expressed an interest in legislation that would allow the state's attorneys or clerks of district court to keep a percentage of the amount collected to be used for the operating costs of the respective office. Other members expressed concerns that the retention of a percentage of the amount collected would take money away from victims.

The committee considered a bill draft that would have authorized the state's attorney or the clerk of district court to retain 25 percent of the amount of restitution collected from insufficient funds checks. According to testimony in explanation of the bill draft, the percentage retained by the state's attorney or clerk of district court would reduce the amount paid to the person to whom the check was written.

Testimony in support of the bill draft indicated the bill draft would give an incentive to state's attorneys or clerks to collect from what would otherwise be an uncollectible judgment. It was also argued the bill draft also would provide a source of funding for the expenses of

collection. A committee member expressed concern that a government employee should not need an incentive to do that person's job.

Testimony in opposition to the bill draft indicated that clerks who collect restitution have been successful in collecting restitution for bad checks. In other testimony in opposition to the bill draft, it was noted the bill draft would reduce the amount collected by the state in the cases of bad checks that are written for child support obligations. It was suggested that a two-tiered system could be established which would exclude government agencies from having a percentage of the amount collected retained, but noted the committee may want to consider if it wants the government to be treated differently. According to the testimony the custodial parent could be asked to give the money back in the case of a bad check; however, this would be a difficult process, and it would take money away from the child. In other testimony in opposition to the bill draft, it was suggested a preferred option may be the imposition of an additional fee rather than the retention of a percentage of the amount collected.

The committee considered a bill draft that required the court, when ordering restitution in insufficient funds check cases, to impose as costs the greater of the sum of \$10 or 25 percent of the amount of restitution ordered and to provide that those costs are to be used by the state's attorney or clerk of district court to offset operating expenses.

According to the one committee member, the intent of the bill draft is to provide money to the court to cover the costs of collection.

Testimony in opposition to the bill draft expressed concern about the additional costs being imposed by this bill draft. The costs imposed would be in addition to the fine imposed by the court. If the court is required to impose 25 percent in costs, the court may not assess as large a fine as it would without the additional costs. Thus, less fine money would be deposited in the common schools fund.

Recommendations

The committee recommends Senate Bill No. 2043 to provide that county and state offices performing restitution collection and enforcement activities as of April 1, 2001, are to continue to perform those activities.

The committee recommends Senate Bill No. 2044 to require the court, when ordering restitution in insufficient funds check cases, to impose as costs the greater of the sum of \$10 or 25 percent of the amount of restitution ordered and to provide that those costs are to be used by the state's attorney or clerk of district court to offset operating expenses.

The committee urges the Legislative Assembly to provide the funds necessary for the additional positions needed in the clerk of court offices for restitution collection if Burleigh, Cass, Grand Forks, or Ward Counties should decide to turn over the county's restitution collection responsibilities from the county state's attorneys to the clerks of district court office.

MENTAL ILLNESS COMMITMENT PROCEDURES STUDY

Background

The majority of North Dakota's initial laws concerning the voluntary, involuntary, and emergency commitment of individuals with mental illness were enacted in 1957 and were not substantially changed until 1977. In 1977 the Legislative Assembly enacted Senate Bill No. 2164, which created NDCC Chapter 25-03.1. The bill established many of the commitment procedures for individuals with mental illness and chemical dependency which are currently in effect. The bill was precipitated by a number of state and federal court decisions that had invalidated state commitment laws similar to North Dakota's.

A number of the commitment procedures contained in NDCC Chapter 25-03.1 have been amended in the years since the chapter was enacted in 1977. For example, in 1989 Senate Bill No. 2389 replaced the terms "alcoholic individual" and "drug addict" with "chemically dependent person"; the bill set forth more specific procedures for the application for involuntary treatment; and the bill permitted the parties to waive the preliminary hearing. In 1989 the timeframe between detention and the preliminary hearing was changed from 72 hours plus weekends and holidays to seven days. The change was made because of the time constraints for the judicial system and for sheriffs when transporting patients. In 1993 Senate Bill No. 2370 authorized the state's attorney to seek reimbursement of funds expended by the county for a respondent who was determined to be indigent but is later found to have funds or property; clarified that a respondent has a right to a preliminary hearing; and set forth a procedure for a respondent to seek the discharge of a petition.

Testimony and Committee Considerations

The committee received extensive testimony and information from individuals involved in the mental illness commitment process, including representatives of the Department of Human Services, the State Hospital, the Protection and Advocacy Project, the North Dakota Psychiatric Society, the judiciary, and the State's Attorneys Association. The committee's considerations centered on three issues--commitment procedures, time period between commitment and hearings, and the Interstate Mental Health Compact.

Commitment Procedures

The committee received testimony from the State Hospital regarding concerns about the state's mental illness commitment procedures. According to the testimony admissions to the State Hospital have decreased over the past several years because of more community-based treatment services. The majority of patients admitted are emergency admissions. The committee also received testimony on how the changes in clinical practice and the delivery of services have changed mental illness commitment procedures. According to the testimony the state's system of providing mental illness

treatment to the citizens of the state, which includes the regional human service centers, the State Hospital, and private providers, is working well. It was noted that while the process works well, there is a need for streamlining in some areas, such as court-ordered medication and paperwork.

The committee also received testimony that more interaction between mental health providers and law enforcement is needed. It was noted there is a need for more training of law enforcement of the needs of the mentally ill.

The committee also received testimony from representatives of the North Dakota Psychiatric Society. According to the testimony involuntary commitment involves the medical and the legal systems. The testimony indicated that although there is considerable variation between the two jurisdictions in the specifics, there is little disagreement about the principles. It was noted that the concern of psychiatrists is the appropriate medical evaluation and care of the patient, and it is at those times that the mental illness commitment procedures become significant. According to the testimony some of the problems with the current commitment process include:

- Medical and psychiatric resources are limited, and many of the current procedures involve these resources in legal procedures;
- Difficulties occur across state lines regarding the treatment of nonresidents and the lack of interstate compact provisions for transfer and coordination of care;
- Conflicts exist between legal requirements and court schedules, which put additional and sometimes impossible demands on medical providers;
- The current multistep system involves extended time delays before court-ordered treatment; and
- The current process involves multiple forms that are redundant and vague.

It was suggested that some of the ways to resolve these problems include:

- Involve medical personnel as expert examiners only. All other procedural requirements are legal rather than medical;
- Transfer responsibility for procedural matters to the legal system;
- Streamline the process by permitting hearings to be held in the hospital, allowing medical examiners to appear in court proceedings by telephone, and by combining the preliminary and treatment hearings;
- Improve interstate compacts;
- Revise state law to eliminate irreconcilable conflicts in timelines; and
- Revise documentation to simplify and more closely reflect the central question of whether the individual requires involuntary treatment.

The committee received testimony regarding the court's role in the mental illness commitment process. According to the testimony the delivery of mental health services has changed over the years in that much more

treatment is being done within the community than in the past. The testimony indicated the total number of cases has not decreased, but the courts' involvement in the cases has decreased. It was noted that many of the needs of persons previously referred to the courts are now being addressed in the community without court involvement. According to the testimony more treatment is being done at local hospitals than at the State Hospital. According to the testimony the commitment law is not based on the idea that everyone with mental illness needs to be a part of a court proceeding, but rather that it applies to those who pose a danger to themselves or others. It was noted that the number of cases in which a person is actually detained for seven days is low, and in the majority of cases, a treatment plan is in place within the first two to three days.

As a result of the information and testimony received by the committee, it was the consensus of the committee that the laws and procedures in place regarding mental illness commitment are generally working well and do not need major change, but rather more education is needed in implementing the statutes that are in place.

With the exception of the change to the time period between commitment and hearings discussed in the next section, the committee makes no recommendation regarding the state's mental illness commitment procedures.

Time Period Between Commitment and Hearings

In 2001 the Legislative Assembly considered Senate Bill No. 2219. The bill would have changed from seven to four the number of days within which a preliminary hearing is to be held once a person has been detained. Testimony received on the bill indicated reducing the number of days within which a hearing must be held is important because the person is being deprived of liberty without a hearing and that the hearing should be held as soon as possible. The bill failed to pass the Senate. The legislative history for Senate Bill No. 2219 indicates there were concerns about the timelines the change would create. The legislative history also indicates the medical profession did not have a major concern with the four-day period, but the courts and the sheriffs did have scheduling and transportation concerns. It was decided the issue required more study.

According to state law the preliminary hearing must be held within seven days of the date a respondent is taken into custody. An evaluation is done within 24 hours after the person is taken into custody. If the court finds probable cause to believe the respondent is in need of treatment, the court may order the respondent detained for up to 14 days for treatment in a treatment facility. The venue for the preliminary hearing is in the county of residence. The law provides that the respondent is entitled to legal counsel.

The committee received testimony from the State Hospital regarding the allowable time periods of detention in other states. North Dakota and 13 other states were compared. Thirteen of the states have time periods that are less than North Dakota's. Eight of the 14 states have a 72-hour timeframe for a court

proceeding. Those states with a 72-hour timeframe exclude weekends and holidays from the calculation.

The committee also received testimony from a person who had the experience of being involuntarily held for the seven-day period without a hearing. According to the testimony people should not be held against their will by mental health professionals who use their discretion in deciding whether a petition should be filed. It was argued there is no reason why a preliminary hearing cannot be held within three days. According to the testimony the state needs to do a better job of safeguarding individual rights. It was argued that the maximum period of time for holding a person before a preliminary hearing should be changed from seven days to three days.

Other testimony indicated Minnesota uses a three-day time period within which the preliminary hearing must be held. It was argued that the distances to transport patients are not any greater in North Dakota than they are in Minnesota. It was also argued that with the use of telephone conferences, telemedicine, fax machines, and e-mail, the preliminary hearing can be held within three days.

The committee considered a bill draft that changed from seven to four the number of days within which a preliminary hearing or a treatment hearing is to be held. Testimony in explanation of the bill draft indicated the number of days would include weekends and holidays. Several committee members expressed concerns that when the process involves an imposition on a person's civil rights, the process should be done as expeditiously as possible.

Testimony from a member of the judiciary indicated the four-day timeframe would not be a scheduling problem for the courts, but it may be difficult for health care professionals to conduct the necessary evaluation and diagnosis within that timeframe. Other testimony indicated the Department of Human Services was not opposed to the change from seven to four days but requested exclusion of weekends and holidays from the four-day period. According to the testimony courts are not open on weekends and holidays to conduct the hearing. In addition it was noted that county sheriffs are required to provide transportation for those hearings, and there is a concern about the availability of transportation on weekends and holidays. The testimony indicated there are practical problems with reducing the seven-day period to a four-day period, but when a patient's liberty is at stake, it is important to err on the side of the patient.

Testimony in opposition to the bill draft indicated that four days would not be an adequate amount of time to receive a report of examination and set a hearing. It was argued that if the time period is changed to four days, judges likely will grant continuances.

Testimony in support of the bill draft indicated that because of the intrusive nature of the involuntary mental illness commitment process, the timeframe for the preliminary hearing should be changed from seven to four days. Other testimony in support of the bill draft indicated the scheduling of a hearing should not be determined based upon the convenience of medical

personnel, court personnel, attorneys, and sheriffs. It was argued that if the bill draft were changed to exclude weekends and holidays, there would basically be no change from the current seven-day period. Other testimony in support of the bill draft indicated a seven-day period can be extremely damaging to patients. It was argued that the longer time period can also cause collateral damage to the person by affecting the person's job and career.

Interstate Mental Health Compact

Testimony received from the State Hospital indicated there are no legal procedures in place to transfer a nonresident who is committed in North Dakota back to the nonresident's home state for treatment. It was noted that because of jurisdictional issues, a court cannot order a person to be treated at an out-of-state treatment facility. For example, a sheriff from Clay County in Minnesota may cross the state line to take a person in need of emergency treatment to a Fargo hospital but is often reluctant to return and transport the patient to the Minnesota State Hospital in Fergus Falls from the Fargo hospital. Upon the completion of the short-term emergency treatment of the patient, the Fargo hospital may determine that the patient needs longer treatment in a state hospital. The Minnesota resident is then transferred to the State Hospital in Jamestown by the Cass County sheriff because the sheriff is unable to cross state lines for a transfer to Fergus Falls. According to the State Hospital, North Dakota needs an arrangement similar to the Minnesota and Wisconsin interstate agreement to resolve the dilemma. The testimony indicated the Minnesota and Wisconsin agreement allows a patient to remain in the treatment facility in which the patient is being treated until the home state has a bed opening. According to the testimony each state is responsible to provide payment for that state's respective citizens. It was noted that of the out-of-state patients who are treated at the State Hospital, about 75 percent are Minnesota residents.

The State Hospital notified the committee that Minnesota recently passed legislation that makes it possible for border communities to have treatment options that would be equivalent to what is available for nonborder communities. According to the testimony for this legislation to work, North Dakota needs to pass complementary legislation. The testimony indicated the Department of Human Services is planning to draft the necessary legislation and introduce the bill as an agency bill during the 2003 legislative session. According to the testimony the problems raised to the committee would be corrected by this legislation. The committee reviewed the Minnesota legislation and agreed that it is important that North Dakota pass legislation to resolve interstate transfer of patients issues.

Recommendation

The committee recommends Senate Bill No. 2045 to change from seven to four the number of days within

which a mental health preliminary hearing or a treatment hearing is to be held.

UNIFORM LAWS REVIEW

The North Dakota Commission on Uniform State Laws consists of 10 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 on which uniformity is desirable and practicable and to serve state government by improving state laws for better interstate relationships. Under NDCC Sections 54-35-02 and 54-55-04, the state commission 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 10 uniform Acts to the Legislative Council for its review and recommendation. These Acts range from revisions to uniform Acts adopted in North Dakota to comprehensive legislation on subjects not covered by existing state law. The 10 Acts were the Revised Uniform Arbitration Act; the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act; the Uniform Foreign Money-Judgments Recognition Act; the Revised Uniform Limited Partnership Act; the Uniform Commercial Code Article 1 - General Provisions; the Uniform Commercial Code, Article 2 - Sales; the Uniform Commercial Code, Article 2A - Leases; the Uniform Commercial Code Articles 3 and 4 - Negotiable Instruments and Bank Deposits and Collections; amendments to Uniform Commercial Code Sections 9-102(a)(5), 9-102(a)(46), 9-304(b), and 9-309; and the Uniform Disclaimer of Property Interests Act.

Revised Uniform Arbitration Act

The Revised Uniform Arbitration Act was recommended by the national conference in 2000. The revised Act replaces the Uniform Arbitration Act, which North Dakota adopted in 1987. The revised Act has been adopted in four states and has been introduced in 14 jurisdictions, including Minnesota. The primary purpose of the Act is to advance arbitration as a desirable alternative to litigation. According to the testimony a revision is necessary at this time in light of the ever-increasing use of arbitration and the developments of the law in this area. The committee makes no recommendation regarding the Revised Uniform Arbitration 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 been adopted in six states, including Montana, and has been introduced in eight jurisdictions, including Minnesota and South Dakota. The Act was introduced in the North Dakota

House of Representatives in 2001; however, the bill failed to pass the Senate.

Testimony in explanation of the Act indicated the Act establishes uniform procedures that will enable courts to recognize and enforce valid domestic protection orders issued in other jurisdictions. According to the testimony uniformity will enable courts around the country to treat such cases consistently, thereby better serving the needs of victims of domestic violence.

According to testimony in opposition to the Act, a number of the issues of concern with the bill introduced in 2001 have been resolved; however, three major concerns still remain. The first concern was that the Act does not reflect the broader definition of protection orders contained in the federal Violence Against Women Act and that a broader definition would encompass both disorderly conduct orders and peace bonds, both of which are also used as protective orders in North Dakota. The second concern deals with custody provisions in protection orders. According to the testimony adequate custody provisions are key to the protection of battered women. It was suggested that the concern could be remedied by adding language referring to the Parental Kidnapping Protection Act or by adding language to the existing statute relating to custody. The third concern dealt with immunity contained in Section 6 of the Act. It was maintained that the existing North Dakota statute is more appropriate because immunity is only extended to acts done in good faith for enforcement and does not cover the failure to act. The testimony indicated the preference would be to keep the existing statute and to adopt the provisions of the uniform Act which would strengthen this state's statute rather than weaken it.

The committee makes no recommendation regarding the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act; however, the committee endorsed the efforts of the North Dakota Council on Abused Women's Services regarding the interstate enforcement of domestic violence protection orders.

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 32 jurisdictions, including Maine, New York, Michigan, Minnesota, Montana, Idaho, and Washington. The Act was introduced in the North Dakota House of Representatives in 2001; however, the bill failed to pass the Senate. 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 the purpose of the Act is to simplify international business by recognizing money judgments obtained in other countries. According to the testimony the primary objection to the bill in the 2001 legislative session was whether the law was needed in North Dakota. The committee makes no recommendation regarding the Uniform Foreign Money-Judgments Recognition Act.

Revised Uniform Limited Partnership Act

The revision of the Uniform Limited Partnership Act (1976), with 1985 amendments, was adopted by the national conference in 2001. North Dakota adopted the Uniform Limited Partnership Act in 1985 and the 1985 amendments in 1987. According to testimony in explanation of the Act, the 2001 revision is intended to provide a more flexible and stable basis for the organization of limited partnerships and to help states stimulate new limited partnership business ventures. The 2001 revision recognizes modern-day uses of limited partnerships, including family limited partnerships for estate planning purposes.

The Secretary of State requested the Revised Uniform Limited Partnership Act not be introduced for consideration by the 2003 Legislative Assembly. According to the Secretary of State the 1999 and 2001 Legislative Assemblies passed bills that revised North Dakota's limited partnership laws and allowed for the creation of limited liability partnerships and limited liability limited partnerships. North Dakota law consists of separate chapters for these three entities. The new uniform Act consolidates all three entities into one chapter. The Secretary of State's testimony indicated that delaying the introduction of the new revision until 2005 or 2007 would allow the interested parties time to review the Act and to monitor whether it has been adopted by other states. The testimony further indicated the introduction and adoption of the Revised Uniform Limited Partnership Act, in its present form, would affect the efforts during the past five legislative sessions which clarified and made consistent the relationships that now exist among the various business entities.

The committee makes no recommendation regarding the revised Uniform Limited Partnership Act.

Uniform Commercial Code Article 1 - General Provisions

The Uniform Commercial Code (UCC), Article 1 - General Provisions, was adopted by the national conference in 2001. North Dakota adopted UCC Article 1 in 1965. Revised Article 1 has been adopted in one jurisdiction and has been introduced in four states. According to testimony in explanation of the uniform law, this revision of Article 1 updates the general provisions section of the UCC in order to harmonize it with ongoing UCC projects and recent revisions. The committee makes no recommendation regarding the Uniform Commercial Code Article 1 - General Provisions.

Uniform Commercial Code Article 2 - Sales

The revision of the Uniform Commercial Code, Article 2 - Sales, was recommended by the national conference in 2002. North Dakota adopted UCC Article 2 in 1965. The committee makes no recommendation regarding the Uniform Commercial Code, Article 2 - Sales.

Uniform Commercial Code Article 2A - Leases

The revision of the Uniform Commercial Code, Article 2A - Leases, was recommended by the national conference in 2002. Article 2A was originally recommended by the national conference in 1987, and amendments were recommended in 1990. North Dakota adopted UCC Article 2A, with 1990 amendments, in 1991. Only one state, South Dakota, adopted the original 1987 Act. Forty-seven jurisdictions, including Minnesota and Montana, adopted the 1987 Act with 1990 amendments. The revised Act provides a legal framework for any transaction that creates a lease, regardless of form. The committee makes no recommendation regarding the Uniform Commercial Code, Article 2A - Leases.

Uniform Commercial Code Articles 3 and 4 - Negotiable Instruments and Bank Deposits and Collections

The revisions of the Uniform Commercial Code, Articles 3 and 4 - Negotiable Instruments and Bank Deposits and Collections, were recommended by the national conference in 2002. The articles are considered companion articles. Article 3 concerns all negotiable instruments, including checks and certificates of deposit. Article 4 concerns bank deposits and collection, which involve checks, certificates of deposit, and other types of business instruments. North Dakota adopted UCC Articles 3 and 4 in 1965 and Revised Articles 3 and 4 in 1991. Revised Articles 3 and 4 have been adopted in 50 jurisdictions. According to testimony in explanation of the Act, Revised Article 3 updates provisions of the UCC dealing with payment by checks and other paper instruments to provide essential rules of the new technologies and practices in payment systems. Revised Article 4 takes care of the immediate problems that have developed over the time that Article 4 has been in effect and updates the law pertaining to certain banking practices. According to the testimony the amendments to Article 4 give banks the opportunity to utilize the best technology in processing checks. The committee makes no recommendation regarding the Uniform Commercial Code, Articles 3 and 4 - Negotiable Instruments and Bank Deposits and Collections.

Amendments to Uniform Commercial Code Sections 9-102(a)(5), 9-102(a)(46), 9-304(b), and 9-309

The amendments to UCC Article 9, which are considered to be technical amendments, were approved by the executive committee of the national conference in November 2001. The committee makes no recommendation regarding the amendments to UCC Article 9.

Amendments to the Uniform Disclaimer of Property Interests Act

The amendments to the Uniform Disclaimer of Property Interests Act were recommended by the national conference in 2002. North Dakota adopted the Uniform

Disclaimer of Property Interests Act in 1993 and the 1999 version of the Act in 2001. The committee makes no recommendation regarding amendments to the Uniform Disclaimer of Property Interests Act.

CONSTITUTIONAL AND STATUTORY REVISION

Civil Commitment of Sexual Predators

The committee received testimony regarding a United States Supreme Court decision, *Kansas v. Crane*, 534 U.S. 407 (2002), and its impact on this state's civil commitment of sexual predators law and information regarding the state's civil commitment law. North Dakota Century Code Chapter 25-03.3 established a judicial procedure for the commitment of sexually dangerous predators. When the law was originally enacted in 1997, it was anticipated there might be as many as seven commitments during the first biennium. The committee received testimony that in the five years since enactment, eight individuals have been committed under the law. According to the testimony North Dakota's civil commitment law has been challenged twice since its enactment. In 1999, in *In the Interest of M.D.*, 598 N.W.2d 799 (N.D. 1999), the law was challenged on double jeopardy grounds. In that challenge, the North Dakota Supreme Court relied on a United States Supreme Court decision in which a similar Kansas statute was found constitutional on those grounds. In 2002, in *In the Interest of M.B.K.*, 639 N.W.2d 473 (N.D. 2002), the state's civil commitment statutes were before the North Dakota Supreme Court again. In that case the issue was whether the standard for commitment, identified in the state as "likely to engage in further acts of sexually predatory conduct," should be interpreted by the court as requiring proof the respondent was "much more likely than not" to engage in sexually predatory conduct if not confined. The court reviewed other state courts' interpretation of similar language in sexual predator commitment statutes and, finding those cases persuasive, identified the standard to be applied as requiring proof that the respondent has a "propensity towards sexual violence of such a degree as to pose a threat to others."

In *Kansas v. Crane* the United States Supreme Court revisited an earlier decision in reviewing a determination by the Kansas Supreme Court that due process required a finding by a court that a respondent in a civil commitment proceeding "cannot control his dangerous behavior." The Court rejected both of the Kansas Supreme Court's requirements for a finding of a total or complete lack of control and Kansas' position that the Constitution permits civil commitment without any lack of control determination. Rather the Court found there must be a "mental abnormality" or "personality disorder" that makes it difficult, if not impossible, for the dangerous person to control his dangerous behavior," and there must be some showing of lack of control before commitment.

According to the testimony the North Dakota Supreme Court has not yet addressed *Crane*. When it

does it will likely apply the *Crane* requirement of a showing of "lack of control" to the definition of "sexually dangerous individual" which means "an individual who is shown 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." The testimony indicated that in light of *Crane*, no changes are needed to be made to the North Dakota law. It was suggested that any changes to the law should wait until the North Dakota Supreme Court addresses *Crane*.

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 Senate Bill No. 2046 to make technical corrections throughout the Century Code. The following table lists the sections affected and describes the reasons for the change:

4-30-48	Section 4-30-19, which is cross-referenced in Section 4-30-48, was repealed by 2001 S.L., ch. 72, § 23.
10-06.1-17(3)(b)	The change corrects an error contained in 1997 S.L., ch. 103, § 1.
10-19.1-146(2)	The change corrects a reference that was not changed when the subdivisions of subsection 1 were redesignated by 1999 S.L., ch. 95, § 42.
11-28.2-01	The change is intended to be consistent with references to voter approval requirements under 1997 S.L., ch. 108.
12.1-12-02	The change corrects a reference that was the result of the renumbering of Article V of the Constitution of North Dakota as approved by the voters June 11, 1996 (1997 S.L., ch. 568).
14-09-08.4(5)	The change corrects a reference that was not changed when the subsections of Section 50-06-05.1 were redesignated under 1991 S.L., ch. 328.
14-09-08.13	Section 50-06-01.8, which is cross-referenced in Section 14-09-08.13, was repealed by 2001 S.L., ch. 418.

14-09-08.14	Section 50-06-01.8, which is cross-referenced in Section 14-09-08.13, was repealed by 2001 S.L., ch. 418.
19-03.1-36(5)(e)	The change corrects a reference that was not changed when the subsections of Section 19-03.1-23 were redesignated under 1993 S.L., ch. 128.
21-03-07(7)	The change corrects a reference that was not changed when Chapter 15-60 was repealed and replaced by other sections under 2001 S.L., ch. 181.
23-02.1-16	The change corrects a reference to Section 23-02.1-19, which relates to death certificate filing requirements rather than Section 23-02.1-15, which provides for delayed registration of birth.
26.1-05-19(6)	This change corrects a reference to Chapter 6-09.2, which was repealed by 1995 S.L., ch. 107.
26.1-06.1-02(9)	This change corrects a reference to Chapter 26.1-18, which was repealed and replaced by Chapter 26.1-18.1 under 1993 S.L., ch. 292.
26.1-17-01(4)	This change corrects a reference to Chapter 26.1-18, which was repealed and replaced by Chapter 26.1-18.1 under 1993 S.L., ch. 292.
26.1-26-31.8	This change corrects a reference to Section 26.1-26-15.1, which was repealed by 2001 S.L., ch. 262, § 136.
26.1-38.1-01(4)(e)	This change corrects an oversight when subparagraphs were redesignated under 1999 S.L., ch. 271.
29-06-15(1)	Section 12.1-31-06, relating to inhalation of volatile chemicals, was repealed and replaced by Section 19-03.1-22.1 under 2001 S.L., ch. 214.
32-03.2-11(9)	Section 12.1-31-06, relating to inhalation of volatile chemicals, was repealed and replaced by Section 19-03.1-22.1 under 2001 S.L., ch. 214.
41-09-02(1)(e)	This change corrects an error contained in 2001 S.L., ch. 361.
44-04-18(2)	This change corrects an error contained in 1997 S.L., ch. 381, § 3.
49-01-02	This change corrects a reference that was not changed after the voters approved the revised Article V of the Constitution in the 1996 primary election (1997 S.L., ch. 568).
54-52.1-01(5)	This change corrects a reference to Chapter 26.1-18, which was repealed and replaced by Chapter 26.1-18.1 under 1993 S.L., ch. 292.

JUDICIARY B COMMITTEE

The Judiciary B Committee was assigned six studies. Section 1 of Senate Bill No. 2187 directed a study of trusts for individuals with disabilities. Senate Concurrent Resolution No. 4032 directed a study of the feasibility and desirability of exempting funds set aside in a trust for a child's education when determining the child's eligibility for certain human service programs. House Concurrent Resolution No. 3005 directed a study of the fees and point demerits for traffic offenses. Senate Concurrent Resolution No. 4042 directed a study of the feasibility and desirability of a centralized process for administering noncriminal traffic violations. House Concurrent Resolution No. 3022 directed a study of the use of incentive programs in North Dakota as a way of keeping elk in the state and providing increased opportunities for landowners, hunters, and the general public. Section 1 of House Bill No. 1269 directed a study of issues relating to resident and nonresident hunting in this state. The committee also was assigned the responsibility to receive the report by the director of the Department of Transportation on the effectiveness of exempting a secured person for noneconomic loss by certain injured persons operating a motor vehicle as required by Section 1 of 1999 Senate Bill No. 2376.

Committee members were Representatives Lois Delmore (Chairman), Curtis E. Brekke, David Drovdal, G. Jane Gunter, Lyle Hanson, Dennis E. Johnson, William E. Kretschmar, Jon O. Nelson, Todd Porter, Dorvan Solberg, and Elwood Thorpe and Senators Dennis Bercier, Michael A. Every, Thomas Fischer, Ben Tollefson, John T. Traynor, and Tom Trenbeath.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2002. The Council accepted the report for submission to the 58th Legislative Assembly.

TRUSTS FOR INDIVIDUALS ON GOVERNMENT ASSISTANCE STUDIES

Because the study of trusts for individuals with disabilities and the study of the feasibility and desirability of exempting funds set aside in a trust for a child's education when determining the child's eligibility for certain human service programs relate to trusts for individuals on government assistance, the committee considered these two studies together.

Background on Trusts for Individuals With Disabilities

Senate Bill No. 2187 directed a study of trusts for individuals with disabilities. The bill as introduced would have provided statutory authority for the creation of special needs and supplemental needs trusts. Before final passage, the House of Representatives replaced the substance of the bill with a study directive.

Legislative History

Engrossed Senate Bill No. 2187 contained the general rule for counting trust assets as assets for

Medicaid eligibility purposes—a trust that provides for the lessening of trust benefits if the beneficiary applies for, is determined eligible for, or receives public assistance is unenforceable as against public policy unless the trust is a special needs or supplemental needs trust.

The bill would have defined a special needs trust and a supplemental needs trust. The bill defined a "special needs trust" as a trust allowed by federal law which allows an individual with a disability to have created a trust using that individual's assets for special needs while receiving medical assistance. The bill defined a "supplemental needs trust" as a trust created for the benefit of an individual with a disability by another that is not otherwise obligated to pay for the needs of that individual. Many trust practitioners use the terms "special needs trust" and "supplemental needs trust" interchangeably and duplicatively. No matter what term is used, the difference between the two trusts depends upon who funds the trust. As defined above, a "special needs trust" is self-funded and a "supplemental needs trust" is funded by a third party.

In addition the bill allowed a court to reform a trust to conform with state or federal law if necessary to accomplish the purpose of a supplemental needs trust or special needs trust. The legislative history reveals one of the reasons the substantive bill was turned into a study was that the clause relating to court reformation was contentious. The argument against the clause was that attorneys should draft a trust clearly, not allow courts to rewrite trusts. The general rule is that courts must follow the intent of the settlor. Allowing courts to change an instrument without evidence of the settlor's intent would be a violation of this rule.

Another reason the bill was amended to provide for a study was because the committee understood that special needs and supplemental needs trusts could be created under present law, and the problem was with the education of attorneys.

Special Needs Trust

Medicaid and supplemental security income trust rules provide an exception for special needs trusts. Those rules ordinarily invade trust principal and income without regard to the purpose for which a trust was established. A special needs trust is specifically allowed under federal law. Under 42 U.S.C. § 1396p(d)(4)(A), a special needs trust is:

A trust containing the assets of an individual under age 65 who is disabled . . . and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual or court if the State will receive all amounts remaining in the trust upon the death of such individual up to any amount equal to the total medical assistance paid on behalf of the individual under a State plan under this subchapter.

The principal governmental health care programs are Medicaid and Medicare. Medicaid is a joint federal and

state program that pays for medical care for individuals who cannot pay their own medical bills. An individual must have limited income and few assets to qualify for Medicaid. Medicaid rules are complicated and differ from state to state. Each state operates its own Medicaid program consistent with federal law. To be eligible for Medicaid, a person must meet income and asset eligibility guidelines. In North Dakota an adult individual cannot have over \$3,000 and a married person cannot have over \$6,000 in available assets under Medicaid eligibility rules. The children and family eligibility group for Medicaid does not have an asset test. On the other hand, Medicare is a health insurance program based solely upon status, mainly age or disability.

Under North Dakota Administrative Code (NDAC) Section 75-02-02.1-25, assets include all assets "actually available." "Actually available" means an applicant, recipient, or responsible relative having the power to dispose of an asset, having a legal interest in a liquidated sum and having the legal ability to make the sum available, or having the power to make or cause an asset to become available. A responsible relative is a spouse or a parent of a child. All assets of a responsible relative are deemed available to the applicant or recipient, even those assets that are not actually contributed to the applicant or recipient.

One purpose of a special needs trust is to assure disabled individuals have money to be available to provide opportunities not covered by governmental programs. Special needs trusts allow individuals to shelter funds from governmental assistance entities while maintaining eligibility for governmental assistance, including Medicaid and supplemental security income.

Another purpose of a special needs trust, besides sheltering financial resources, is to provide extra benefits that are secondary to public or governmental resources. The trustee of a special needs trust has full discretion to provide extra benefits above the primary support funded by governmental assistance from both income and corpus of the trust. Many items are not covered by governmental assistance. These items include education, recreation, transportation, dental work, some medical work, and a variety of luxury items.

Although a special needs trust is not an asset for determining eligibility for Medicaid, certain rules must be followed in creating the trust. A special needs trust may be funded solely with the assets of the disabled trust beneficiary. This could include the benefits under the terms of a settlement agreement or judgment, workers' compensation, inheritance, or life savings. However, the disabled trust beneficiary may not set up the trust for that beneficiary. Someone else must create the trust with the assets of the beneficiary. The creator may be a parent, grandparent, guardian, conservator, guardian ad litem, or court.

Although the disabled person has special needs trust funds available during that person's life to supplement publicly funded benefits, the trust beneficiary will be limited in that individual's choice of providers of medical services to those medical providers that are medical assistance-certified. The beneficiary cannot reimburse

nonmedical assistance providers from the trust when similar care is available with a medical assistance provider. In addition, at the death of the beneficiary, the trustee must repay the state for medical assistance benefits paid on behalf of that person during that person's life.

In addition to special needs trusts for individuals, there are special needs trusts funded by pooled assets. A pooled asset special needs trusts consists of multiple trust accounts that are pooled for investment and administration purposes. A nonprofit association must perform these duties. The nonprofit association pools the funds of many beneficiaries but is required to keep separate accounts for each beneficiary. The benefit to the beneficiary over a regular special needs trust is the use of professional services that might otherwise be cost-prohibitive.

Supplemental Needs Trust

A supplemental needs trust is a trust created using funds other than those belonging to the disabled individual, the individual's spouse, or someone legally responsible for the support of the disabled individual. Usually a family member such as a parent or grandparent will want to provide for the needs of a disabled child or grandchild; however, the family member will not want to make the disabled individual ineligible to receive governmental assistance.

A number of North Dakota Supreme Court cases have dealt with the issue of supplemental needs trusts. These cases included *Hecker v. Stark County Social Service Board*, 527 N.W.2d 226 (N.D. 1994), *Kryzsko v. Ramsey County Social Services*, 600 N.W.2d 237 (N.D. 2000), *Eckes v. Richland County Social Services*, 621 N.W.2d 851 (N.D. 2001). The main issue in each case was whether the trust was a support trust or a discretionary trust. A support trust is a trust that provides that the trustee must pay income or principal as either is necessary for the education or support of a beneficiary. A discretionary trust is one that grants a trustee uncontrolled discretion over payments to the beneficiary. The trustee has the power to not make any distribution at all to the beneficiary, and the beneficiary cannot compel the trustee to make distributions under the terms of the trust instrument. If the trust is a support trust, it is an available asset for determining Medicaid eligibility. If the trust is discretionary, the trust is not an asset for determining Medicaid eligibility.

A properly drafted supplemental needs trust will not affect eligibility for programs with an asset test. These programs include Medicaid, supplemental security income, and temporary assistance to needy families (TANF). There are other programs for which there is no asset test. These programs include the food stamp program and the children's health insurance program. Although a properly drafted supplemental needs trust will not have an asset issue with any of these programs, there are still income eligibility issues for each of these programs that need to be properly addressed in the trust instrument.

Other States

Iowa, Minnesota, and New York have statutes much like Engrossed Senate Bill No. 2187 (2001). For example, Minnesota Statutes Section 501B.89 provides exceptions to the general rule that a trust that provides for the limitation of the interest of a beneficiary if the beneficiary applies for or receives public assistance is unenforceable against the public policy of the state of Minnesota. There are two exceptions in the Minnesota statute which are almost identical to the exceptions in Engrossed Senate Bill No. 2187. The Minnesota law was enacted in 1992.

Testimony and Committee Considerations

The committee heard testimony on and considered three possible solutions to removing impediments to the construction of trusts for individuals on government assistance. These solutions included the creation of a pooled trust, trust forms, and a bill draft.

The Department of Human Services is working with Guardian and Protective Services, Inc., to create a pooled special needs trust. The advantage to a pooled special needs trust over an individual special needs trust is that the pooled trust is managed by a professional trust manager. An individual special needs trust usually is managed by a relative because there is very little money involved with a supplemental or special needs trust, and it is not cost-effective to have a corporate trustee. The reason a pooled special needs trust can have low-cost professional management services is because of the economies of scale gained by the grouping of assets of individuals in the trust.

One of the reasons for the study was that attorneys were not aware of these trusts and, if they were, it was difficult to draft a trust that the Department of Human Services would find to be an asset. The Department of Human Services had made forms in electronic format for use by attorneys and the public to make trusts for individuals on government assistance. These forms would result in lower costs for legal services. The availability of the forms was advertised to attorneys, and copies were sent to lawyers and interested groups and persons.

The committee was informed by an attorney that the forms were difficult to assemble and were rigid in their application to individual circumstances.

The committee considered a bill draft similar to 2001 Engrossed Senate Bill No. 2187, except for one major change. The bill draft did not include the clause relating to reformation of a trust. Interested persons suggested a number of changes to the bill draft. Although there were numerous suggested changes, there were two main suggested changes that related to contingent beneficiaries and court reformation.

One change was to add language that stated upon the death of the beneficiary or termination of the trust, a contingent beneficiary does not disqualify a supplemental needs trust and that stated upon the death of the beneficiary or reimbursement of the Department of Human Services for medical assistance, a contingent beneficiary does not disqualify a special needs trust.

Between two meetings of the committee, the Department of Human Services decided there should not be a contingent beneficiary for special needs trusts.

Another change was to add language giving courts authority to reform a trust to accomplish the purpose of a supplemental or special needs trust. The reformation could be done upon the determination that the grantor had in good faith attempted to qualify the trust, the reformation is necessary to accomplish the purpose of a supplemental or special needs trust, and the reformation would be in accordance with the grantor's intent.

There would be very few reformation of trusts already in existence. The reformation language would be primarily for trusts made in wills and trusts that are not funded until some future date. These trusts do not get attention until many years after the trust language is drafted. Although reformation is available as an equitable remedy, all legal remedies must be exhausted before a court allows an equitable remedy. Reformation would streamline the process by making reformation a legal remedy. Reformation is commonly done for charitable trusts and is allowed under the Internal Revenue Code.

The committee was informed a person of limited means would be unduly burdened if that person had to have a lawyer review the trust document or go to court every time there was a policy change. Reformation would allow these changes to be made when the trust is funded in the future.

Other suggested changes included:

1. Replacing the terms "special needs trust" and "supplemental needs trust" with the terms "self-settled special needs trust" and "third-party special needs trust."
2. Removing language that does not require submission of a trust to a state agency or court for interpretation or enforcement. The reason for the removal was that the language may mislead individuals to believe that they do not need to submit certain trusts for review when they apply for medical assistance or other public benefits.
3. Changing the definition of supplemental needs trust which includes that the trust "does not make an individual with a disability ineligible for medical assistance while maintaining assets in that trust."
4. Adding language that would have the bill draft apply to a supplemental needs trust regardless of when funded.
5. Clarifying language that states the bill should do no harm against third-party special needs trusts.
6. Making specific references to the federal code.
7. Removing any reference to disability criteria purported to be created by the Department of Human Services because the term is defined by federal criteria.
8. Removing language in the bill draft that states that third-party special needs trusts are defined

as to "qualify" because the bill draft provides no method for "qualification."

The committee heard testimony from individuals with children with disabilities and attorneys in support of the concepts contained in the bill draft. One reason for the support of the bill draft was that it would aid individuals in estate planning.

The committee considered a revised bill draft incorporating most of the suggested changes. The main changes allowed a contingent beneficiary in a third-party special needs trust to not disqualify a disabled individual from public benefits and court reformation to accomplish the purpose of the trust.

Recommendation

The committee recommends Senate Bill No. 2047 to allow for the formation of self-settled special needs trusts and third-party special needs trusts.

Background on Effect of Educational Trusts for Children on Eligibility for Human Services Programs

Educational Trusts and Public Assistance

It is difficult to say how an educational trust might affect public assistance benefits without knowing more about the particular trust language. In the application process for food stamps and the children's health insurance program, trust assets are not included in determining eligibility; eligibility is based upon income. In considering eligibility for Medicaid, there is not an asset test for children and families under Medicaid. This makes issues moot relating to asset availability in an educational trust for a minor child Medicaid recipient or for a minor child whose parents are Medicaid recipients. The issues may arise in considering eligibility for TANF. Trust assets can be considered as available depending upon the language in the trust. If the trust is available for the support of the child while on TANF, all assets would be considered available in determining eligibility.

The TANF program is similar to Medicaid in that under NDAC Section 7-02-01.2-21, TANF requires all assets that are actually available to be considered when determining eligibility. Assets are actually available when at the disposal of a member of the TANF household. If a member of a TANF household has a legal interest in an asset and has the legal ability to make it available for support of that person or if a household member has the lawful power to make an asset available or cause the asset to be made available, the assets are considered available in considering eligibility for TANF. Under NDAC Section 75-02-01.2-22 the asset limitations for TANF are \$5,000 for a household consisting of one person and \$8,000 for a household consisting of two or more persons.

If an educational trust created by a person not in the household is properly drafted, there should not be a TANF eligibility issue. It appears that a grandparent may set up a trust for the benefit of a grandchild for educational purposes without the trust assets being available to reimburse money spent on TANF programs received

by the grandchild's parents. The grandparents would need to draft the trust to prohibit access to funds in the trust while the child is in a TANF household. If the trust states that the trustee may not make distributions from trust income or principal except for postsecondary education expenses and provides that the child must be enrolled in a university, college, or vocational program while between the ages of 18 and 23 at the time of distribution, it appears the trust assets cannot be counted as available to the child for purposes of TANF.

Other Issues

The committee reviewed means other than trusts for funding the educational needs of a grandchild. For example, a grandparent may place money in a state-qualified tuition program. This state has a higher education-qualified state tuition program, also known as a Section 529 savings plan.

A Section 529 savings plan is a state-sponsored, tax-deferred savings plan designed specifically for individuals saving for college. Any United States citizen may open a Section 529 account for the benefit of any United States citizen who wants to pursue higher education. The owner of the account is in control of distributions from the account and may change the beneficiary of the account at any time. Account assets may be used to pay for qualified higher education expenses, such as tuition, room, board, books, fees, and supplies, at any accredited postsecondary school in the United States. The investment income on the account is tax-deferred for federal income tax purposes until the time of withdrawal for higher education expenses. Distributions are excluded from income to the extent used to pay for qualified higher education expenses. For any nonqualified withdrawals the account owner is responsible for regular income taxes and a 10 percent penalty.

As the result of the passage of Senate Bill No. 2414 (1999), the Bank of North Dakota developed the college SAVE program, a qualified state tuition program that meets the requirements of a Section 529 savings plan. The Bank of North Dakota has selected Morgan Stanley as the manager of the program and intends the program to be accessible to all United States citizens for use at any eligible education institution.

Conclusion

The committee does not make any recommendation with respect to educational trusts for children. The impetus for the study came from an attorney who was unsure how to plan for situations that involve grandparents saving for a grandchild whose parents may go on public assistance, but there does not appear to be any difficulty in planning for this situation. The committee was satisfied there are options for planning in this situation, especially with the newly created option of saving for a grandchild through a Section 529 account.

FEES AND POINT DEMERITS FOR TRAFFIC OFFENSES STUDY

Background

House Concurrent Resolution No. 3005 directed a study of the fees and point demerits for traffic offenses. The resolution stated that the present system for the disposition of traffic offenses was created in 1973 as the result of a Legislative Council study during the 1971-72 interim. Since 1973 there have been numerous changes to the fee and point demerit system. The legislative history of House Concurrent Resolution No. 3005 reveals the resolution resulted from a concern with the fees and points for driving in excess of the lawful speed limit and was broadened in scope to encompass any other area of concern for fees or point demerits for traffic offenses.

Points

The noncriminal point and fee system for traffic offenses has expanded greatly since 1973. Initially there was a list of 18 offenses for which demerit points were assigned for noncriminal offenses and six for criminal violations. Under North Dakota Century Code (NDCC) Section 39-06.1-10(3), the present point list assigns points to 35 noncriminal traffic offenses and 13 criminal offenses.

Under NDCC Section 39-06.1-10(1), if the number of points assigned to a violation are not more than two, the violation and the points may not be entered on the driving record but must be recorded separately. This separate record is not available to the public and thus is not reported to the operator's insurance company or anyone else. However, these points do apply for the purposes of license suspension. Under Section 39-06.1-10(2), an operator's license is suspended if an operator accumulates 12 or more points. Under Section 39-06-01.1, acts committed by a minor resulting in an accumulated point total in excess of five points will result in having that minor's license canceled by the Department of Transportation.

Fees

In 1973 offenses were divided between moving and nonmoving. The only fees were \$30 for careless driving, \$20 for a moving violation, and \$10 for a nonmoving violation. Presently, the general rule is that moving and nonmoving violations are \$20, with various exceptions. The following are tables of these exceptions--a table of fees in excess of \$20 and a table of fees under \$20. The following tables do not include basic speeding offenses nor motor carrier regulation violations. Criminal offenses and associated fines are included in the tables if there is a mandatory amount or a mandatory minimum amount listed in statute, and these offenses are denoted by an asterisk.

FEES IN EXCESS OF \$20	
Fees	Violation (Type of Offense)
\$40+	Exceeding speed limit in school zone or construction zone (speed/style)
\$50	Failing to give immediate notice of reportable accident (accident)*
\$50	Open container (liquor)
\$50	Overtaking or passing stopped schoolbus (overtaking)
\$50	Improperly using schoolbus signs (overtaking)
\$50	Registered owner permitted overtaking or passing of schoolbus (overtaking)
\$50	Failing to yield to pedestrian at lighted traffic-controlled intersection (pedestrian)
\$50	Failing to yield right of way to pedestrian (pedestrian)
\$50	Failing to stop for automatic railroad crossing signal (railroad)
\$50	Failing to stop for railroad crossing marked with stop sign (railroad)
\$50	Failing to register snowmobile (snowmobile)
\$50	Failing to register all-terrain vehicles (ATV)*
\$50	Exhibition driving (speed/style)
\$100	Violating parking of mobility impaired through the use of illegal permit or plate (parking)*
\$100	Violating parking of mobility impaired (parking)
\$100	Drag racing (speed/style)
\$100	Racing (speed/style)
\$150+	Driving without liability insurance (insurance)*
\$300+	Driving without liability insurance for second time within 18 months (insurance)*

FEES OF LESS THAN \$20	
Fees	Violation
\$5	Clinging to a vehicle on a bicycle (bicycle)
\$5	Riding on the roadway when bicycle paths are provided (bicycle)
\$5	Not prominently displaying mobility-impaired certificate or license plate (parking)
\$5	Improperly parking vehicle on Capitol grounds when prohibited (parking)
\$10	Displaying improper color of clearance side marker, back up lamps, or reflectors (equipment)
\$10	Display of light that is not red from rear (equipment)
\$10	Operating an all-terrain vehicle while under 16 years of age (ATV)*

Unlike point demerits, fees charged in cities or home rule cities may be different from fees in the North Dakota Century Code. Under NDCC Section 40-05-06, in a city a fee may be established which may not exceed the limits for equivalent categories of violations of state law. However, under Section 40-05.1-06, home rule cities can create their own fees for violations of city ordinances. One exception is the provision that no fee may be imposed by "a city or county operating under a home rule charter" for a violation of Section 39-21-41.2, which requires a child restraint system for each child under age 4 and a child restraint system or seatbelt for a child aged 4 to 17. Another exception is the fee for speeding

in a school zone in all places in this state, including home rule cities.

Speeding

Beginning in 1979 there were a number of changes to the scale of fees and demerit points for speeding in 55-mile-an-hour zones and 65-mile-an-hour zones. Between 1991 and 2001, however, no changes were made to those scales. In 1997 a new scale of fees and demerit points for speeding in a 70-mile-an-hour zone was created. In addition, higher fees for speeding in a construction zone were created in 1997.

Three bills that relate to this study were introduced during the 2001 legislative session. One failed to pass, one passed and was vetoed, and one was enacted into law. As introduced, House Bill No. 1443, which failed to pass, would have altered the fees and point demerits for driving in excess of the lawful speed limit and would have increased the speed limit on interstate highways to 75 miles per hour.

Senate Bill No. 2012 would have established a 75-mile-an-hour speed limit on interstate highways. However, the Governor vetoed the increased speed limit stating there were not adequate adjustments to the fees and points assessed for higher speed limits on the interstates.

Senate Bill No. 2088 changed the fees and point demerits for driving in excess of the lawful speed limit. The bill created one scale of demerit points for speeding on any road in which the lawful speed limit is 70 miles per hour or less and one scale of demerit points for roads with a lawful speed limit in excess of 70 miles per hour. In practice there is only one "active" scale of demerit points because there is no road in this state on which the lawful speed limit is in excess of 70 miles per hour. The active scale of point demerits replaces three previous scales. The three previous scales were for speeding within city limits on a noncontrolled access highway, speeding on a highway on which the speed limit is higher than 55 miles per hour, and for speeding on any other highway.

The following table compares the demerit point scale for speeding in 1973 with the scale in 1997 and 2001. The year 1973 is used because it was the first year points were applied to traffic offenses. The year 1997 is used because that was the most recent legislative session before 2001 in which there was a change in the fees and demerit points for speeding.

Miles Per Hour (MPH) Over Limit	1973	1997			2001	
	All Zones	Within City Limits	55 MPH and Lower Zones	65 MPH and 70 MPH Zones	Within City Limits, 55 MPH and Lower, 65 MPH and 70 MPH Zones	70 MPH Plus Zones
1-5						0
6-10		1		1	0	1
11-15		2		4	1	2
16-20		3	3	7	3	5
21-25		4	4	7	5	7
26-30		6	6	10	9	10
31-35		6	6	10	9	12
36-45		8	8		12	
36+				12		15
46+		12	12		15	

During the 2001 legislative session, House Bill No. 1443 attempted to and Senate Bill No. 2088 did change the fee schedule for driving in excess of the lawful speed limit. Senate Bill No. 2088 made some minor changes to the fees exceeding the speed limit in a zone in which the lawful limit exceeds 55 miles per hour, mainly by raising the fees for driving in excess of 35 miles per hour over the speed limit. The bill addressed the fees for driving in excess of the speed limit in a zone posted in excess of 70 miles per hour. The following is a table comparing the fee schedule in 1973 with the fee schedule in 1997 and in 2001:

Miles Per Hour (MPH) Over Limit	1973	1997		2001		
	All Zones	55 MPH and Lower Zones	65 MPH and 70 MPH Zones	55 MPH and Lower Zones	65 MPH and 70 MPH Zones	70 MPH Plus Zones
1-5	\$20	\$5	\$11-\$15	\$5	\$11-\$15	\$20
6-10	\$20	\$6-\$10	\$17-\$25	\$6-\$10	\$17-\$25	\$40
11-15	\$20	\$11-\$15	\$28-\$40	\$11-\$15	\$28-\$40	\$60
16-20	\$40	\$17-\$25	\$43-\$55	\$17-\$25	\$43-\$55	\$80
21-25	\$40	\$28-\$40	\$58-\$70	\$28-\$40	\$58-\$70	\$100
26-30	\$40	\$43-\$55	\$73-\$85	\$43-\$55		\$125
31-35	\$40	\$58-\$70	\$88-\$100	\$58-\$70	\$73-\$100	\$150
36-45	\$40	\$73-\$100		\$73-\$100	\$125-\$170	
36+	\$40		\$105 + \$5			\$155 + \$5
46+	\$40	\$105 + \$5		\$105 + \$5	\$175 + \$5	

Other States

Other states use a variety of methods in enforcing traffic rules. Some use a criminal system and some use a combination criminal and noncriminal system similar to this state. Most states have a point system, but there is no uniformity on assessing points. Some states suspend licenses after a certain number of offenses. For example, Minnesota suspends a license when an individual has four traffic citations in one year. South Dakota has a point system but only for hazardous moving traffic violations such as driving while under the influence but not for speeding.

As for fees or fines, states with criminal systems have fine and bond schedules. However, as in Minnesota, these fines and bond schedules may change from county to county. Of the surrounding states, none have a fee system comparable to North Dakota.

Testimony and Committee Considerations Crashes

The committee received information on motor vehicle crashes to determine whether there is any relationship between crashes and other factors, including location, time, day, sex of driver, related offenses, weather, first harmful event, and speeding. The committee focused on speeding.

Speeding citations are issued for two-tenths of 1 percent of all crashes; however, care required citations are issued for 25.7 percent of all crashes, and care required citations may include instances when individuals are speeding. There is more speeding on Friday afternoons, Sunday evenings, and Monday mornings than at other times. The Highway Patrol testified that speed is a factor in 47 percent of crashes. This percentage includes driving too fast for the conditions and exceeding the speed limit.

The top three harmful events involved in crashes include another motor vehicle at 52 percent, animals at 20 percent, and rollovers at 8 percent. Sixty-four percent of crashes in urban areas are on roads posted under 55 miles per hour. Forty-one percent of crashes in rural areas are in town on roadways posted under 55 miles per hour. The estimated economic cost of crashes in this state for the year 2000 was \$320,998,000.

The committee received testimony on the dangers associated with higher speed limits. Rollovers increased from 1994 to 1997 from 7,280 to 11,460. If these numbers are corrected for miles driven, the rate of rollover deaths per 100 million vehicle miles traveled has increased from .297 to .479. The testimony attributed these increases to the popularity of pickups and sport utility vehicles with a high center of gravity and to higher speed limits. The percentage of people who died who were fully restrained has increased from 13 percent in 1988 to 26 percent in 1998. The reason the death rate for fully restrained individuals has doubled is attributed to an increase in severity of accidents. Rollovers are a severe accident. In addition, there is little support in the roofs of pickups and sport utility vehicles which makes it more likely that a tall person will be severely injured in a rollover.

Speed Limit Bill Drafts

The committee considered a bill draft that would have raised the speed limit on the interstate highways to 75 miles per hour and a bill draft to create one speed limit of 65 miles per hour for paved two-lane highways, to replace the speed limits of 65 miles per hour for day and 55 miles per hour for night. Committee members discussed whether consistent speed limits for day and night would be helpful to the drivers of this state.

The Highway Patrol testified that there are roads in this state where it would be appropriate to have a 65-mile-an-hour day and night speed limit; however, some roads should be 55 miles per hour at night.

The committee received testimony that an increase in the speed limit increases gas consumption and the state should not promote increased gas consumption considering the current state of affairs in the Middle East.

The Highway Patrol testified that there is a level of tolerance in the enforcement of speeding because of speedometer error and to be reasonable. It would be an endless task to give a citation for speeding 71 miles per hour in a 70-mile-an-hour zone; however, if the speed limit is raised to 75 miles per hour, this tolerance would be lessened.

The committee was informed it would cost \$2 million to \$2.5 million to increase the speed limit to 75 miles per hour on interstate highways. The cost would come from the change in signage and longer guardrails and other improvements. These improvements would be done as changes were being made otherwise to a particular section of the interstate highways.

Committee discussion in opposition to raising the speed limit from 70 to 75 miles per hour on the interstates indicated the speed is unsafe. People presently drive at least 75 miles per hour on the interstate and an increase to 75 miles per hour will result in a de facto speed limit of 80 miles per hour, which is even more unsafe. Another reason in opposition was that because of the controversial nature of the issue, the speed limit should be changed by an initiated measure rather than by the Legislative Assembly.

Committee discussion in support of raising the speed limit from 70 to 75 miles per hour indicated that because speed limits are a maximum and not a minimum, an individual may drive under the speed limit if that individual has safety concerns. The interstate system was designed for the cars built in the 1950s traveling at 80 miles per hour. Congress mandated a lower speed limit in the 1970s because of gas supply concerns.

The Highway Patrol testified that the penalties for speeding are not consistent, and this inconsistency hinders citizens in determining the severity of the offense. In fact, law enforcement has to refer to reference material to tell somebody what the penalty is for speeding on a certain road at a certain speed. Changes in the fee and point system which are clear and consistent would provide a better deterrent. One suggestion was to make speed limit penalties apply to five mile an hour increments and not for each mile an hour. In addition, the penalty should be consistent for the amount over the speed limit for each limit. It was argued that if the speed limit were to increase, the penalties for speeding would have to be strict enough to make people obey the speed limit.

It was suggested that this state be like other states and inform drivers at the border of the speed limit penalties on signage. Another suggestion was that if the speed limit is increased, other safety factors should be adopted to maintain the same level of safety, e.g.,

primary seatbelt enforcement and a .08 per se alcohol level.

Committee discussion included support for increased penalties to ensure compliance with the speed limit. In addition, committee discussion included a desire for the support of law enforcement by including increased safety measures, including primary enforcement of seatbelt laws. There was opposition to primary seatbelt enforcement on the grounds that government should not mandate matters of personal choice.

Fees and Points Bill Drafts

The committee received information on the fees charged by other states and cities within this state to review the comparable fairness of state fees. The committee compared the fee and bond schedules for similar offenses in North Dakota, South Dakota, Wyoming, Montana, Bismarck, Fargo, Grand Forks, and Minot. Generally, North Dakota assesses \$20, South Dakota assesses \$50, Wyoming assesses \$60, and Montana assesses \$70 per traffic offense. Generally, Minot assesses \$40, Bismarck assesses \$40 or \$50, Grand Forks assesses between \$21 and \$71 (in \$10 increments), and Fargo assesses \$60 per traffic offense. The committee compared the fees or fines for speeding in North Dakota, Montana, South Dakota, Wyoming, Fargo, Grand Forks, Bismarck, and Minot. The speed limit is 70 miles per hour on the interstates in North Dakota and is 75 miles per hour in Montana, South Dakota, and Wyoming. States ranked in order of increasing fines or fees start with North Dakota at the lowest, followed by Montana, South Dakota, and Wyoming. Cities ranked in the order of increasing fees or fines start with Minot at the lowest, followed by Bismarck, Grand Forks, and Fargo.

According to Fargo officials, the recent increase of fees for traffic offenses in Fargo has not helped in the promotion of safety. As a means of increasing safety, the city is investigating increasing enforcement by requiring law enforcement officers to issue one ticket per day.

The committee considered a bill draft to create a singular point and singular fee scale for driving in excess of the speed limit. The bill draft created a fee of \$5 for each mile per hour over the limit. The bill draft increased the point violations in five-mile increments over the speed limit. A person must drive 6, 11, 16, 21, etc., miles an hour over the speed limit for the points to increase under present law. The bill draft made the change at the 5- or 10-mile-an-hour increment.

The bill draft was intended to make the fee and point system logical and simple. The intent was not to increase penalties but to create consistent penalties; however, the points could be higher for one particular speed zone.

Committee members discussed whether to leave the points as they are and change the fees. There was some concern with increased insurance rates if points are increased above the level that is reportable to insurance companies.

The committee divided the bill draft into two bill drafts. One bill draft would have created a singular point scale for driving in excess of the speed limit.

The committee received testimony on the effect of points on insurance rates. Insurance companies determine rates based on different underwriting criteria. Increasing points for speeding offenses will result in higher insurance rates if there are more offenses over two points. The committee was informed that the insurance industry would like a full abstract, instead of a limited abstract listing those offenses exceeding two points. Historically the Legislative Assembly has taken a contrary position because of a policy that certain offenses should not affect insurance rates.

The committee reviewed three examples of the effect of a speeding offense. The first example showed a \$108 increase in premiums for a speeding ticket and a \$141 increase for a driving while under the influence offense; the second example showed a \$79 increase in premiums; and the third example showed a 5 percent increase for every point demerit over three.

Opponents of a simpler point system argued that the point system was made simpler in 2001. The bill draft would change by one-mile per hour the offenses that would be reported to the insurance industry, and this would raise insurance rates. It was argued that points are not a deterrent to speeding and that fees are a better deterrent to speeding.

The other bill draft made all fees for driving in excess of the speed limit \$5 for each mile per hour over the limit. The \$5 per mile over the limit fee is much less than what other states charge for speeding. Home rule cities make their own fees and they are generally more than \$5 per mile over the limit. The \$5 fee would increase revenues by approximately \$1.5 million assuming the same type of offenses. If the \$5 per mile per hour over the limit fee reduces speeding citations by 20 percent, there will be an increase of approximately \$1 million. A fee of \$2 for each mile per hour over the limit would be almost revenue-neutral.

Committee members discussed whether such a change should be revenue-neutral--\$2 for each mile per hour over the limit. A few committee members opposed the scheme because of the desire to continue a base fee to which an additional fee per mile per hour over the limit would be added.

Recommendations

The committee recommends House Bill No. 1046 to remove the nighttime speed limit on paved two-lane highways resulting in a 65-mile-an-hour speed limit.

The committee recommends House Bill No. 1047 to establish a \$5 fee for each mile per hour over the speed limit. The bill provides a uniform and simple system for determining speeding fines.

CENTRALIZED PROCESS FOR ADMINISTERING NONCRIMINAL TRAFFIC VIOLATIONS STUDY

Background

Senate Concurrent Resolution No. 4042 directed a study of the feasibility and desirability of a centralized process for administering noncriminal traffic violations. Noncriminal traffic citations are processed in the counties of this state before the traffic violation information is transmitted to the Department of Transportation. According to the study directive, current methods of processing result in redundancies in data entry, delays in transmitting the traffic violation information to the Department of Transportation, and substantial investments of time by county and city employees.

Criminal Versus Noncriminal

The study focused on state noncriminal traffic offenses. There are state criminal traffic offenses, e.g., driving while under the influence, for which the procedure differs from noncriminal offenses. For a state criminal traffic offense, the offender may request an immediate hearing, is formally arrested, or is required to sign a promise to appear. There are city criminal traffic offenses and city noncriminal traffic offenses. City criminal traffic offenses are handled much in the same manner as state criminal traffic offenses. City noncriminal traffic offenses are handled much in the same way as state noncriminal traffic offenses, except an offender must sign a promise to appear.

Context of a Noncriminal Traffic Offense

Under NDCC Section 39-07-07, if a person is halted for a traffic offense, the halting officer may take the person's name and address, take the license number of the person's motor vehicle, and if for a state noncriminal traffic violation, notify the person of the right to request a hearing when posting bond by mail. A person may not be taken into custody for a violation of a noncriminal traffic offense. The officer is required to provide the motorist an envelope for use in mailing the bond.

The first option for the person halted for a noncriminal traffic offense is to not attend a hearing. Under NDCC Section 39-06.1-02, a person cited with a noncriminal offense may pay the statutory fee or post bond. If the person pays the fee, the violation is admitted. If the person posts bond for a traffic violation under state law, the bond must be submitted within 14 days of the date of the citation, and the person must indicate whether a hearing is requested. If the person does not request a hearing within 14 days of the date of the citation, the bond is forfeited and the person admits the violation. If the person requests a hearing, the person may forfeit the bond by not appearing at the time designated. Within 10 days after a forfeiture of bond or payment of the statutory fee, the violation must be certified to the Department of Transportation.

The second option is for the person to attend a hearing. The person has two options at the hearing. The

first option is to admit the offense and then explain the person's actions. The hearing official may waive, reduce, or suspend the statutory fee or bond under this option. However, the person will be assessed the points for the offense. The second option is for the person not to admit the offense and request a hearing on the issue of the commission of the violation charged under NDCC Section 39-06.1-03. At the time of the request for the hearing, the person charged must deposit an appearance bond equal to the statutory fee for the violation. If the official finds that the person has committed the traffic violation, the official notifies the Department of Transportation.

The person may appeal from the administrative hearing to the district court for a new trial. If the person is found to have committed the violation, the clerk of court reports that fact to the Department of Transportation. Under NDCC Section 39-06.1-04, a person who fails to choose one of the previous methods of addressing a traffic citation is deemed to have admitted to the commission of the violation.

Supreme Court Services Administration Committee Study

The movement for creating a centralized process for noncriminal traffic citations began in 1994 with the Judicial Services Subcommittee of the Court Services Administration Committee, a committee of the North Dakota Supreme Court. The problem the subcommittee addressed was that individuals issued a noncriminal traffic citation were given a hearing date on the uniform traffic citation. When the judge arrived at the hearing, it was common for the individual cited to not appear. To relieve the burden from judges, the subcommittee considered a suggestion for a centralized process for noncriminal traffic citation matters. The subcommittee discussed centralizing the citation and hearing process.

The subcommittee prepared a bill draft and sent it to the Court Services Administration Committee for consideration. The idea suggested by the bill draft was that a single set of envelopes would be provided to the sheriffs and Highway Patrol officers which would direct the person cited to submit the bond to a central office in Bismarck. The Department of Transportation opposed the proposal because adequate funding was not available for additional staff and facilities. However, the bill draft addressed two issues--the scheduling of judges around appearance dates set on a citation and the redundancy of several different entities typing in the same information on citations. Only the latter was opposed by the department because of lack of funding. In 1995 the Supreme Court introduced the proposal as a bill to address the problem of scheduling hearings for which the person to which a citation was issued does not appear. The bill was enacted in 1995.

North Dakota Criminal Justice Information Sharing Plan

One new development from 1994 is that on March 1, 2001, a report entitled *North Dakota Criminal Justice*

Information Sharing Plan was released. One of the short-term objectives of the plan is to reduce delays in the processing of traffic citations. The plan states:

The current manual process creates situations where courts receive the payment for the citation prior to receipt of the citation. The courts are unable to answer questions from citizens about a particular citation until the citation is received at their location, often several days after the citation was written.

Because citations are processed in the county where issued, state patrol and other law enforcement officers must be cognizant of county boundaries and file paperwork to the correct location. Citizens can be confused about whom to contact with questions about citations. Because over 95 percent of offenders pay the citation without contesting it, they expect the transaction to be fast and easy.

As a result of this project, better customer service will be provided to citizens by more efficient processing of traffic citations. As an additional benefit, criminal justice agencies will spend less time on bureaucratic paperwork and more time maintaining legal protections and safety.

The plan addresses the project description for reducing delays in the reporting of traffic citation information. The plan lists three phases in the implementation of the improved citation system. The first phase involves collecting citation information at the point of origin, the officer's car, or as soon thereafter as possible. The second phase is to explore the possibility of implementing the citation system on a statewide basis for local law enforcement agencies. The plan states:

The third phase is to evaluate the processing of citations from the standpoint of the courts and [the Department of Transportation] to streamline the process. Currently the courts manually enter the citation disposition information from each of the 29 counties on [the Unified Court Information System] into the system and process payment receipts. For the other counties, the information is not entered. Hearings are scheduled if requested. This happens for less than five percent of citations. Dispositions of the citations are sent electronically to [the Department of Transportation] to match against the driving record of the offender. Options will be explored to electronically transmit the citations from local law enforcement so the courts do not have to reenter the citations. A pilot project using Highway Patrol information will be considered to demonstrate feasibility.

In addition, a central processing location for citations will be explored. This would allow better customer service by eliminating the need to determine the county where the

citation was processed and possibly allowing online payment of the citation. Since over 95 percent of the citations are paid without further involvement, information could be passed on to [the Department of Transportation] in a more timely manner. For citations requiring a hearing, information would be transmitted to the courts for further processing. A feasibility analysis will be completed to identify legislative changes necessary, as well as staffing and funding issues. . . .

The plan discussed the promotion by the office of the court administrator of the use of a common system to manage information. The unified court information system is used in most counties and in four municipalities. Electronic interfaces from the unified court information system exist for citation reports to the Department of Transportation.

Report on Administrative Traffic Citation Processing

On December 22, 1999, the office of State Court Administrator released a report entitled *Report on Administrative Traffic Case Citation Processing*. The report was a study of the amount of time court personnel spent processing administrative traffic case convictions. The report stated:

Historically, clerks of district court have been responsible for the processing and management of administrative traffic cases issued on our state's roads and highways. In 1998 over 56,886 administrative traffic case convictions were processed by clerks of district court. While only 1-3% of these cases involve motorists who request a hearing, all of the citations must be processed and fines receipted prior to sending the disposition information to the Department of Transportation Driver's License Division for entry on the driver's record. While these categories of cases require very little judicial attention, they require substantial clerical time for the data entry and processing of the cases.

It was estimated 70 to 80 percent of all motorists pay the administrative fee, based on the original citation. If payment is not received within 14 days, a notice is sent to the motorist indicating the motorist has 10 days to pay. Based on the second notice, about 80 percent of the remaining offending motorists do send in payment to the clerk's office. If payment is not made in that time period, the Department of Transportation is notified and the process is initiated to suspend the motorist's driver's license.

If the motorist requests a hearing, the motorist is required to return the citation with the amount of the ticket as the amount of bond for the hearing. A notice of the hearing is mailed to the motorist and to the state's attorney's office. Following the hearing, the clerk takes the appropriate action dismissing or assessing the fine.

Funding

The state receives the funds from traffic citations either for deposit in the general fund or state school fund. Under Article IX, Section 2, of the Constitution of North Dakota and NDCC Section 29-27-02.1, statutory fees, fines, forfeitures, and pecuniary penalties are paid to the state school fund. Bail bond or bail for a criminal violation is credited to the state general fund. If the traffic offense charge is one of the noncriminal offenses for which a statutory fee is paid, that statutory fee is deposited in the state school fund. If a bond is posted and forfeited, then it is a forfeiture that is deposited with the state school fund.

For a criminal traffic offense, the fine paid for the offense is deposited in the state school fund. If as part of that criminal offense a bail bond is posted and is declared forfeited by a court, that bail bond amount is payable to the state general fund. Before 1995 the forfeited bond (that now goes to the state general fund) was deposited in the general fund of the county whose officers originally instituted the action.

As a general rule, a noncriminal traffic offense committed within city limits is a violation of a city ordinance, and the fee for the violation goes to the city. However, cities report the violation for demerit point purposes to the Department of Transportation. Home rule cities may set fees for violation; however, counties, including home rule counties, may not set fees. The fees for counties are set by state law.

Before April 1, 2001, all clerks of court were operated and funded by each county. For the 2001-03 biennium 11 county clerks of court are operated and funded by the state--Cass, Grand Forks, Ramsey, Walsh, Ward, Williams, Burleigh, Morton, Richland, Stutsman, and Stark. Four county clerks of court are operated and funded by the county--Oliver, Sheridan, Sioux, and Billings. The remaining 38 county clerks of court are operated by the county and are funded in part by the state on a contract basis for the amount of "state" work done by each office.

The *Report on Administrative Traffic Citation Processing* stated it is difficult to project the workload for clerks processing administrative traffic citations due to the wide variation in estimated times reported by the clerks in the study. However, a substantial amount of time is devoted to the processing of administrative traffic citations by clerks statewide. According to the Supreme Court administrator's office, traffic citations use 7.04 full-time equivalent (FTE) clerk employees statewide--4.48 of those clerks are in the 11 state-operated and state-funded counties, .07 of those clerks were in the county-operated and funded counties, and 2.49 clerks are in the 38 county-operated and state-funded counties.

For the 2003-05 biennium Billings County is the only clerk of court operated and funded by a county. Oliver, Sheridan, and Sioux Counties became county-operated and state-funded counties. Several counties eligible for state-funded clerks of court opted for contracts with the state. These counties are Barnes, Benson, Bottineau, Dickey, McHenry, McKenzie, McLean, Mercer, Mountrail,

Pembina, Ransom, Rolette, Sargent, Traill, and Wells. These counties were eligible because a state court study showed a need for at least one FTE employee to fulfill clerk of court functions. All clerks of court offices must adhere to standards set by the Supreme Court.

Testimony and Committee Considerations

The committee reviewed the present process and the proposed process for traffic offense administration. The committee heard testimony in support of a centralized process from the Department of Transportation, the Supreme Court, the Information Technology Department, and the Highway Patrol. Opposition to a centralized process came from certain clerks of court.

Those in favor of the centralized process contended that the courts are doing data processing for the Department of Transportation and it would be more efficient for the Department of Transportation to do the data entry and send the paperwork on the 5 percent of the drivers who request a hearing back to the courts. Under the present system, Highway Patrol officers must carry multiple envelopes to provide to individuals issued citations depending upon the county in which the citation is issued. The centralized process would require one envelope.

The centralized process would take advantage of technology. The centralized process may allow individuals issued a citation to investigate the status of the citation on the Internet. In the future there may be payment by credit card. If the administration technology were combined with the Highway Patrol's mobile data terminals that electronically issue citations, it would further eliminate data reentry by having the citation entered into the system once at the point of issuance. Seventy out of 128 Highway Patrol cars are equipped with automated traffic citation issuing equipment and 5 more cars should be equipped before 2003.

The committee was informed that the use of technology would allow for the facilities used for the administration of traffic offenses to be located anywhere in the state. The Department of Transportation expected to contract out the data entry functions of a centralized system.

In the 11 counties that are state-funded, the time savings would be used for other functions so no immediate cost-savings would be realized by the state. In the counties that are contract-funded, the money previously included for traffic offense administration would be removed from future contracts. This reduction would result in the savings of approximately 3.5 full-time employees in contract counties. These full-time employees cost approximately \$9,104 per month. The most any county would lose is approximately \$1,000 per month.

The savings of \$9,104 per month would offset the cost of the centralized process. The centralized process would take approximately four full-time employees for the startup and two full-time employees after the process was established. Two full-time state employees could be funded by the \$9,104 per month savings from contract

counties. There would be a one-time cost of \$162,500 from general fund money and an ongoing annual cost of \$129,600 in general fund money for the centralized process. The reason it requires fewer employees at the state level than at the county level is because the centralized process would create efficiencies in data entry.

The committee received testimony from two clerks of court in favor of a centralized process for traffic offense administration. Both of these clerks were from state-funded counties. The committee received testimony in opposition to a centralized process for traffic offense administration from clerks in contract counties.

The committee considered a bill draft that would have centralized the traffic offense administration process.

The committee received testimony in favor of the bill draft. Federal legislation may require clerks of court to notify the Department of Transportation within 10 days of the issuance of a citation to an individual with a commercial driver's license. The bill draft would speed up the process. In general the centralized process would provide accurate motor vehicle information in a faster manner.

The committee received testimony in opposition to the bill draft. At the annual clerks' of court conference, two clerks were in favor of the centralized process, three had no opinion, and 36 wanted to keep the system the same. It was suggested that the information sharing process would be shortened if the Department of Transportation had access to the court system's computers. Clerks contended that they could accommodate any time requirements imposed by federal law with the proper education and information.

The committee received testimony on the impact of the bill draft in contract clerk of court counties. Some clerks of court have a deputy and a portion of the deputy's time is used for traffic offense administration. If these duties were removed, it was argued, there would be a reason for that position to be removed by the board of county commissioners, which would remove an employment opportunity in rural North Dakota. The opinion was expressed that local entities are known for providing personal and friendly service and there may not be a benefit to gaining efficiency by sacrificing service. It was argued that when the child support system was centralized, it did not provide as good of service as it did when it was operated by each county.

Concern also was expressed that the centralized process would be located in Bismarck even though the committee received testimony that the data entry would be outsourced outside Bismarck. Historically most centralized processes are located in Bismarck.

Conclusion

The committee makes no recommendation with respect to centralization of the traffic offense administration process.

REPORT ON EFFECTIVENESS OF EXEMPTING A SECURED PERSON FROM NONECONOMIC LOSS BY CERTAIN INJURED PERSONS OPERATING A MOTOR VEHICLE

In 1999 the Legislative Assembly enacted NDCC Section 26.1-41-20, which states:

In any action against a secured person to recover damages because of accidental bodily injury arising out of the ownership or operation of a secured motor vehicle in this state, the secured person may not be assessed damages for noneconomic loss for a serious injury in favor of a party who has at least two convictions under section 39-08-20 and who was operating a motor vehicle owned by that party at the time of injury without a valid policy of liability insurance in order to respond to damages for liability arising out of the ownership, maintenance, or use of that motor vehicle.

This section expires on August 1, 2003. Section 2 of 1999 Senate Bill No. 2376 required the director of the Department of Transportation to report in 2002 to an interim committee designated by the Legislative Council regarding the effectiveness of NDCC Section 26.1-41-20 in decreasing the incidents of driving without liability insurance. The Legislative Council assigned this responsibility to the committee.

The prime sponsor of the bill enacting NDCC Section 26.1-41-20 testified the bill was introduced to encourage motorists to obtain liability insurance and, hence, reduce the uninsured motorist rates applied to insured motorists. Michigan and California have similar laws.

The Department of Transportation reported on the effectiveness of NDCC Section 26.1-41-20 in reducing insurance rates and reducing the number of uninsured motorists. The committee was informed that the "no pay/no play" law has not had a significant effect on insurance rates. Although the number of uninsured drivers has been decreasing since 1999, the cause is unknown. The reduction could be caused by changes in the law or the economy. The worse the times are economically, the more people drive without insurance. Committee discussion indicated that although Section 26.1-41-20 expires on August 1, 2003, individual members would personally monitor the law during the 2003 legislative session.

RETENTION OF IN-STATE ELK STUDY

Background

House Concurrent Resolution No. 3022 directed a study of the use of incentive programs in North Dakota as a way of keeping elk in the state and providing increased opportunities for landowners, hunters, and the general public. The study stated that elk have been exported from Theodore Roosevelt National Park in this state because of overpopulation, while there is a high demand to hunt elk in this state. This study suggested

relocating elk on public land or providing incentive programs to landowners in exchange for more elk on private land.

Wild elk are concentrated in the northeast corner of the state and the southwest portion of the state in the area surrounding Theodore Roosevelt National Park. However, elk may move great distances in search of territory and may be found in any part of this state. In addition, under NDCC Chapter 36-25, there may be farmed elk in the state. A farmed elk is a member of the elk family confined in a manmade enclosure designed to prevent escape and raised for fiber, meat, or animal byproducts; or raised for breeding, exhibition, or harvest. The study focused on the wild elk in the southwest portion of the state.

The recent history of elk in this state begins with elk migrating into the Pembina area in the early 1970s. In the late 1970s elk escaped from a herd owned by the Three Affiliated Tribes in New Town. The hunting of elk in the Pembina area of the state began in 1982. The first hunting of elk in the Badlands began in 1984. In March 1985, 47 elk were brought into this state by the National Park Service and located in the South Unit of Theodore Roosevelt National Park. By September 1989 a total of 176 elk were counted in the park. The mean annual growth rate of 31 percent from 1985 was one of the highest reported of all time, anywhere.

In January and February of 1993, a total of 220 elk were removed from the park. The majority of these elk were given to various Indian tribes. The Indian tribes sold many of these elk back to private elk farms in this state.

In March 1999 the Game and Fish Department counted a total of 410 elk in the Theodore Roosevelt National Park, and seven bull elk were counted outside the park. In January 2000 over 200 elk were removed from the Theodore Roosevelt National Park. The majority of these elk were shipped to the Kentucky Game and Fish Department for the reintroduction of elk into that state.

Under the original memorandum of understanding with the Theodore Roosevelt National Park, the Game and Fish Department has the first opportunity to obtain surplus elk from the park. The department has not exercised this option because of the lack of acceptable sites for reintroduction outside the current elk range. In 1993 and 2000 the National Park Service gave the elk directly to the Indian tribes and the Kentucky Game and Fish Department.

Hunting of Elk in This State

Although elk hunting in the southwest portion of the state began in 1984 with hunting in Dunn and McKenzie Counties, effective hunting around the Theodore Roosevelt National Park did not begin until 1997.

In 1991 Billings County was opened to elk hunting, and in 1996 Golden Valley was opened to elk hunting. However, before 1997 only two elk had been harvested legally in Billings and Golden Valley Counties, partly due

to the lack of elk outside the park during the regular hunting season from October through November.

There were two major changes in 1997. The first change was the adoption of 1997 House Bill No. 1202, which created special elk depredation management licenses to be issued to landowners in designated areas around Theodore Roosevelt National Park upon the payment of a fee required for a resident big game license. The provisions of law governing the number of licenses issued for each unit for hunting elk do not apply to special elk depredation management licenses. A person who receives this license is eligible to apply for a license to hunt in future years and is eligible to participate in the Rocky Mountain Elk Foundation raffle.

Another major change in 1997 was that the entire format for the elk season was changed for the area surrounding Theodore Roosevelt National Park, which includes Billings and Golden Valley Counties. A late August season was offered with 47 permits--17 special elk depredation management licenses and 30 general public permits. Hunters harvested 37 bull elk in the area.

The history of hunting elk around Theodore Roosevelt National Park from 1997 to the present may be summarized as there are more units, more seasons, and generally more elk harvested. Between 1991 and 1996 only two elk were harvested around the park. In 1999 hunters harvested 44 elk. In 2000, however, hunters harvested 35 elk. The number of general public permits has increased from 30 permits in 1997 and 1998 to 52 permits in 1999 and 2000. In 2001, 62 general public permits were issued. Seasons have been moved to August when elk are outside the park with two seasons in unit E4 and one season in unit E3. In addition, for the 2001 hunting season the length of the season was expanded for preferential and special elk depredation management licenses to include the period of May 14 through July 24.

Hunting in Theodore Roosevelt National Park

One solution to handle the problem of surplus elk in Theodore Roosevelt National Park would be to have limited access hunting in the park. Various officials of the National Park Service have been approached with this solution. On a local and national level, however, the National Park Service will not support hunting in the park and congressional action is required.

Hunting of elk is allowed in the Grand Teton National Park. Under United States Code Title 16, Section 673c, the Wyoming Game and Fish Commission and the National Park Service must create a program to ensure the permanent conservation of elk within the Grand Teton National Park. The program must include controlled reduction of elk in the park by hunters licensed in the state of Wyoming.

The reason hunting was included in the legislation is because of the history of controversy and struggle in creating the Grand Teton National Park. In Wyoming there was a concentrated effort to stop the creation of the park. In North Dakota there was support for Theodore Roosevelt National Park--in 1921 the North Dakota

Legislative Assembly requested this state's Congressional Delegation to assist in creating the park.

State Incentive Programs

Hunting is an important management tool for controlling elk populations and depredation. When offered the opportunity to hunt on private land, many hunters will pay for the privilege. During the 1999-2000 interim, the Legislative Council's interim Agriculture Committee received testimony on different forms of compensation for deer depredation. The committee also received testimony on game farms, fee hunting, and the sale of gratis tags as means by which landowners could profit through hunting.

Ranching for wildlife is a managed program in eight states based on cooperative agreements between landowners and state wildlife agencies. California, Colorado, Utah, and New Mexico have comprehensive programs. Oklahoma, Washington, Nevada, and Oregon have fledgling programs. The ranching for wildlife 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. These programs are controversial, however, because they involve fee hunting.

Idaho has a different kind of program that mirrors circumstances in North Dakota. The program in that state was created in 1999 and was built on a system much like gratis tags in North Dakota. In Idaho these tags are called landowner appreciation tags and are transferable. They are issued contingent on the landowner providing reasonable public access to hunting. The number of landowner appreciation tags issued to a landowner is based on acreage and is limited to two.

Testimony and Committee Considerations

Problem - Too Many Elk in and Around Theodore Roosevelt National Park

The committee received testimony that the National Park Service's current management policy has resulted in too many elk outside the Theodore Roosevelt National Park. In the first week of March ranchers take an elk count of the E2 hunting unit, which includes Dunn and McKenzie Counties, for a period of two days. In 2002 there were 200 to 350 elk in that unit.

The committee received testimony on the reason why elk escape from the park. Surrounding ranchers say elk escape because of the inadequate fence surrounding the park. The original agreement with the park to have elk in the park required the park to make a good-faith effort to keep the elk in the park. The park is fenced with a seven-foot-high woven wire fence. The problems with the fence is that elk mostly go under the fence, not over the fence, to get out of the park. This mainly happens at washouts that occur on a regular basis in the Badlands.

The superintendent of the park testified that when elk were brought to the park, it was recognized that the elk

would escape even though it would be attempted to fence them in the park. Elk can jump a 10-foot fence from standing still and a 14-foot fence with a run at the fence. There are three people hired for the fence crew and other staff work on fences as situations arise. The fence-building crew focuses on the north unit and keeping bison in the park. The elk that escape from the park can be identified because elk in the park are tagged in their ear and have a microchip embedded in their neck for identification with a laser scanner.

Committee members noted that Sully's Hill Game Preserve is fenced and there has been no incident of an elk escaping from the preserve. It was argued that a better fence, e.g., a fence used by elk farmers, may keep elk inside the park.

Present Solution - Ship Out of State

The committee received testimony on the present solution for managing the elk population within the park--shipping the elk out of state. The National Park Service manages the elk by taking elk out of the park when the elk reach a certain number. This is the same method used to manage bison and horses in the park. The major problem with this solution is that the demand for elk may diminish and the Park Service does not have an alternate plan if no one would take the elk.

The committee heard testimony in favor of shipping elk out of state rather than keeping the elk in this state for hunting purposes. The last shipment of elk out of the state reduced much of the depredation problem, and the next roundup will be in January 2003. It was argued that the elk in this state came from other states, and this state should return the favor and provide elk to other states. It was also stated that this state may need diversity in breeding and the sharing of elk with other states should not be eliminated.

The committee heard testimony in opposition to the periodic exporting of wild elk from the western part of the state. The committee received a petition with signatures in excess of 4,300 citizens in opposition to shipping elk out of state. One of the reasons for the opposition to shipping of elk out of this state is because it is physically difficult for the elk. During the first elk roundup, 46 elk died or had to be killed. Twenty-four of these elk were killed as a result of the capturing process and 22 tested positive for disease. During the 2000 roundup, however, there was no quarantine and only two animals died.

Present Solution - Hunt Outside Park

The committee received testimony on the present solution for managing the elk population outside the park by hunting. Once elk get out of the park, the elk are no longer the National Park Service's responsibility. The Game and Fish Department becomes responsible for managing the elk through hunting. In particular, the problem of elk outside the park is dealt with through flexible landowner licenses and an early hunting season.

More hunting licenses may not be a solution, however, because elk retreat into the Theodore Roosevelt National Park when they receive hunting pressure outside the park. If there are too many permits, the

success ratio decreases because elk are driven to a place in which it is difficult to hunt. The National Park Service is attempting to purchase the Elkhorn Ranch on the Little Missouri. This property is intended to be designated as a national preserve. Hunting is permitted on national preserves. The 5,000 plus acres of the ranch would become available for hunting consistent with Game and Fish Department regulations.

Possible Solutions in Park

One suggestion for addressing the elk population is to create incentives for the hunting of elk within the Theodore Roosevelt National Park rather than outside the park. This would require congressional action, which may take a long time and is not likely to happen. Many national groups, including animal rights groups and maybe the National Park Service, would be against the change. The Game and Fish Department, however, is in support of allowing hunting in the Theodore Roosevelt National Park.

The committee was informed that gun hunting may cause the elk to disperse outside the park, thereby exacerbating the problem. It was suggested that hunting in the park be limited to bow hunters.

The committee considered a resolution draft to urge Congress to allow guided hunts within the Theodore Roosevelt National Park. Committee discussion included that hunting within the park would be the best solution for excess elk in the park.

The committee received testimony in opposition to the resolution draft. The committee was informed that the park is only five to six miles wide and 10 miles long and the park is too small to have elk hunting. In addition, hunting would have an impact on other wildlife in the park and would affect tourism.

Possible Solutions Outside Park

The committee received testimony on possible solutions to managing the elk population outside the park. These solutions included transferring the excess elk to elk farms and moving elk to public land outside the park.

Committee discussion included consideration of using the excess elk in the park for elk farms within this state because that is preferable to shipping them out of state and would be economic development.

The committee received testimony in support of the placement of elk outside the park, so there would be more opportunities to hunt elk. The committee was informed that a reasonable number of elk should be located on public land outside the park, so there would be more elk-hunting opportunities. At present, the demand for elk tags is high. There were approximately 12,000 applications and 195 tags issued last year.

The committee was informed that landowners would be compensated for depredation by incentive programs and by hunters who are willing to pay thousands of dollars to hunt wild elk. Elk hunting could be provided for through a mutually beneficial solution like the coverlocks program in which the landowner and the hunter benefit.

The committee received testimony in opposition to the placement of elk outside the park on public land, in particular, on the national grasslands. The committee received a resolution from the Slope County Board of County Commissioners and the North Dakota Stockmen's Association, testimony from grazing associations, and petitions in opposition to the release of any elk into the federal, state, or private lands in the state. Placing elk outside the park on public land would be detrimental to ranchers because the public land is intermixed with private land. It would be difficult to keep elk on public land. Most public land is in the Badlands where elk do not live.

The committee was informed that elk are very destructive of oat fields, fences, and hay bales, will affect the profitability of agriculture, will compete with cattle for grass, and may transmit diseases to domestic livestock.

The committee received testimony that placing elk outside the park would place a burden on ranchers. The committee was informed that ranchers must spend a significant amount of time dealing with hunters during the elk season. Ranchers indicated they would not want elk released even if there were incentive programs, the elk were fenced onto public land, and depredation costs were paid. Testimony from ranchers repeated that the elk are a problem created by the Park Service and the Park Service should solve the problem.

The committee was informed that the migratory nature of elk would add to the depredation problems. Elk do not stay where they are placed. Some elk will stay upon relocation, but dispersion will begin immediately. Elk can cover many miles in a day and could return to their original habitat in a very short time. Two elk moved over 640 miles in one month and returned to the Theodore Roosevelt National Park. The Game and Fish Department does not support hauling elk to places around the state and releasing them.

The committee received testimony on diseases carried by wild elk which is an impediment to placing elk outside the park. There were 190 infectious agents and ectoparasites in elk identified; however, 174 of these are considered to be low-risk relative to potential health hazards in regard to the relocation of elk. High-risk infectious diseases and ectoparasites are chronic-wasting disease, brucellosis, tuberculosis, and *dermatocenter andersoni*, *ixodes pacificus*, and *psoroptes sp.*

The committee received testimony on chronic-wasting disease. Elk had to be destroyed in Colorado and this required the purchase of an incinerator. It is unknown how chronic-wasting disease spreads, and it is unknown if it can move from wild elk to domestic livestock. There is no vaccination for chronic-wasting disease.

The committee was informed North Dakota does not have chronic-wasting disease in the elk herd in the Theodore Roosevelt National Park. The elk in and around the park are not confined enough for chronic-wasting disease to be a major problem. Disease spreading from elk to cattle is a concern. However, whitetail and mule deer carry chronic-wasting disease in

this state and travel throughout the state without the disease passing to domesticated livestock.

Solution to Problems With Elk Placed Outside of Park

The committee received testimony on prevention of depredation as a solution to depredation caused by elk placed outside the park. There is a food plot program in the northeast portion of the state created in cooperation with local wildlife clubs and the Rocky Mountain Elk Foundation in which 80 acres are planted with forage for the elk to help alleviate depredation problems. The same program is being developed in the Bottineau area. The development of food plots is based upon requests, and there have not been any requests for food plots in the west.

The committee received testimony on incentive programs as a solution to the depredation caused by the placement of elk outside the park. The committee was informed that an incentive program based on other state programs and one that is flexible enough to be custom-tailored to individual landowners would be mutually beneficial to landowners, hunters, and the Game and Fish Department. Of the programs the committee reviewed, the committee was told that if this state adopted Montana's block grant program, which pays landowners based on hunter days, the program should apply to all species. The Montana plan for elk works in Montana because there are hundreds of thousands of acres of contiguous marginal land that may be used for elk habitat. The same situation does not apply to this state. The committee was informed of support for Utah's incentive plan, but it was unknown whether that program could be adapted to this state.

The committee was informed it would be cost-prohibitive for ranchers to build fences that would guarantee the exclusion of elk. Elk fence costs approximately \$1.50 per foot. However, ranchers use the deer-proof hay yard program, and it works against elk in the protection of winter feed supplies.

The committee was informed the Game and Fish Department does provide post and wires through the deerproof hay yard program and other assistance but does not pay for damage. The department assists landowners with approximately \$26,000 a year for elk depredation. A program that would provide for payments for damage caused by elk depredation would be difficult to administer. If program payments for depredation are based on a scientific method, program development will require a long time even though the demand for compensation is immediate.

The committee considered a resolution draft urging Congress to pay for depredation caused by elk that escape from the Theodore Roosevelt National Park. Committee discussion included that ranchers do not really want compensation for depredation but instead would like the elk to be removed from the park. Discussion included a story of an individual who had struck a moose with a car and was severely injured. It was argued that if the moose were an elk brought by the National Park Service into this state, the injured person

should be able to recover from the Park Service for the damages caused by the elk. An amendment was suggested to include funding for personal injury and property damage caused by elk.

Committee discussion in opposition to the amendment included that the amendment could jeopardize the effectiveness of the resolution draft. It was argued that although the federal government should pay for the damage caused by the elk, the amendment adds an additional concept, thereby lessening importance of depredation funding.

Recommendation

The committee recommends Senate Concurrent Resolution No. 4002 to urge Congress to fund the cost of depredation, personal injury damage, and property damage caused by elk escaping from the Theodore Roosevelt National Park.

RESIDENT AND NONRESIDENT HUNTING ISSUES STUDY

Background

House Bill No. 1269 required a study of issues to resident and nonresident hunting in this state. The bill required a study of:

1. The number of licenses issued to residents and nonresidents.
2. The fees for licenses issued to residents and nonresidents.
3. The time periods for which licenses are valid.
4. Whether zones should be established.
5. Effects of resident and nonresident hunters on landowners.
6. Effects of resident and nonresident hunters on guides and outfitters.
7. The economic impact of nonresident hunters.
8. Resident and nonresident hunting in bordering states.

The study mandated by House Bill No. 1269 is a result of the controversies surrounding nonresident hunting as addressed in House Bill Nos. 1269 and 1468, as introduced. House Bill No. 1269 would have eliminated the one 7-day waterfowl hunting period for nonresidents and established six zones with the maximum number of licenses specified for each zone. House Bill No. 1468 would have eliminated the requirement that nonresident waterfowl hunters also possess a nonresident small game hunting license and established a 14-day period or two 7-day periods for nonresident small game hunting. The bill also would have increased various nonresident hunting and fishing fees. Because the impetus for this study came from House Bill Nos. 1269 and 1468, the study focused primarily on waterfowl hunting.

History of Nonresident Waterfowl Hunting Season

There have been many attempts to change the special waterfowl hunting season for nonresidents since the season's creation in 1975. Before 1975 there was not a special waterfowl hunting season for nonresidents.

For example, under NDCC Section 20.1-01-02, in 1973 waterfowl were considered game birds along with pheasants, grouse, ducks, and other birds. Under Section 20.1-03-12, in 1973 state law required a nonresident to obtain a small game license to hunt waterfowl. A small game license allowed the hunting of game birds and cost \$35. In addition, under Section 20.1-03-02, in 1973 a general game license cost 50 cents.

In 1975 under Senate Bill No. 2379, the Legislative Assembly created a special nonresident waterfowl hunting license. The waterfowl license was required in addition to a small game license. The waterfowl license entitled a nonresident to hunt waterfowl during any period of 10 consecutive days and in specified waterfowl hunting zones. The Governor was required to create waterfowl hunting zones and was allowed to specify the number of licenses that could be issued in each zone. In 1975 the Governor created nine zones. A nonresident was allowed to purchase only one waterfowl hunting license per year. The cost of the additional license was \$5.

In 1979 the Legislative Assembly passed House Bill No. 1326. As introduced, the bill removed the special time limitation (the 10-day period) on nonresidents and made discretionary the creation of hunting zones. As passed, this bill allowed a nonresident to hunt for any one period of 10 consecutive days or any two periods of five consecutive days each and allowed the two 5-day hunting periods to be in different zones. From 1979 to 1984 the Governor proclaimed eight zones. The legislative history suggests the intent of the bill was to increase nonresident hunting by allowing flexibility in the periods of time in which a nonresident could hunt, which in turn would increase tourism in this state. The flight of migrant waterfowl is not predictable, and allowing two weekends gives the hunter a better chance to be in the area when the waterfowl are present.

In 1981 the Legislative Assembly passed House Bill No. 1395, which increased the duration of time allowed for nonresident waterfowl hunting from 10 consecutive days to 14 consecutive days and from any two periods of five consecutive days to seven consecutive days. The main division in 1981 was between individuals who did not want nonresidents leasing large tracts of land, thereby preventing residents from hunting, and individuals in the hospitality and service industries who wanted nonresident hunters to come to their communities and spend money on services. In short, the conflict was between in-state goose hunters and local merchants and service providers.

One reason for the increase in the duration of the nonresident license was there had been a decrease in nonresident's leasing land for hunting purposes. One reason for the decrease was the Internal Revenue Service became less tolerant of the practice of leasing hunting land for entertainment purposes as a business deduction.

In 1995 the Legislative Assembly passed Senate Bill No. 2143, which excepted nonresident youth under age 16 from being required to purchase a nonresident

waterfowl hunting license if there is a reciprocal agreement with the youth's state or province.

In 1999 the Legislative Assembly enacted Senate Bill No. 2089, which allowed a nonresident to purchase a spring white goose license instead of any other license, including a nonresident waterfowl hunting license. The Legislative Assembly also passed House Bill No. 1459, which added an option that allowed a nonresident waterfowl hunter to purchase a license that is valid for seven consecutive days and is valid statewide. Otherwise, provisions relating to the duration, zones, and license remained the same as they were under the 1981 legislation. However, since 1996 the number of zones proclaimed by the Governor had been lowered to three, and one of those zones was included with the other two zones when a license was purchased for those other two zones. One notable change in the arguments for and against nonresident hunters concerning the bill was that the legislative history did not reveal any opposition to the bill in the committees.

Under present law a nonresident waterfowl hunter must have a nonresident fishing, hunting, and furbearers 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.

There is no limit on the number of nonresident hunters per zone.

House Bill Nos. 1269 and 1468

The issues addressed in House Bill Nos. 1269 and 1468 were some of the main issues directed by this study. The following is a discussion of those issues, which relate to resident and nonresident goose and pheasant hunters.

During the 2001 legislative session House Bill No. 1269 addressed the issue of the increased number of nonresidents hunting waterfowl in this state. Under NDCC Section 20.1-03-07.1 the Governor specifies waterfowl hunting zones for nonresident waterfowl hunters and the number of licenses issued in each zone. House Bill No. 1269 would have made six statutory zones and placed caps on the number of licenses issued in each zone. It appears the purpose of the bill was to lessen hunting pressure by nonresident hunters, thereby allowing more hunting opportunities for resident hunters.

As introduced, House Bill No. 1468 decoupled nonresident waterfowl licenses from small game licenses. Small game includes upland game. The main upland game species hunted by out-of-state hunters is pheasant. The bill also would have raised the fees for nonresident small game licenses and waterfowl licenses. This bill mainly affected the nonresident hunter who

wanted to hunt both small game and waterfowl. The bill limited nonresident small game hunting to a period of 14 consecutive days or two periods of seven consecutive days each. Under present law, there is not any time limitation for nonresident pheasant hunters beyond those limits for resident hunters.

Again, the main controversy was between small town businesses that want nonresident hunters to come pheasant hunting and resident hunters who want less competition from nonresident hunters to hunt pheasants. To decrease competition, the bill placed time limitations on nonresident hunters.

Numbers of Hunters and Game

The issues addressed in House Bill No. 1269 appeared to arise because of intense hunting pressure in and around Jamestown, a major flyway for geese. When the nonresident goose hunting season began, the issue addressed was hunters in the Devils Lake area. The flyway and the nonresident hunters have moved to the west in the last 25 years. In 1999 ranked by days hunted by county, Stutsman County is ranked third after McLean and Ward Counties for ducks, and ranked fourth after McLean, Ward, and Burleigh Counties for goose hunting. In 1999 Ramsey County is ranked sixth in ducks and geese.

There has been increased competition from nonresident hunters for areas to hunt waterfowl. There has been a steady increase in the number of nonresident waterfowl hunters since 1990. In 1990 there were approximately 5,500 nonresident waterfowl hunters. In 1993 there were approximately 9,500 nonresident waterfowl hunters. In 1996 there were approximately 13,750 nonresident waterfowl hunters. In 1999 there were approximately 22,000 nonresident waterfowl hunters. In 2001 there were approximately 30,000 nonresident waterfowl hunters. While the number of nonresident waterfowl hunters has increased, the number of resident waterfowl hunters has stayed relatively stable. In the early 1990s there were approximately 30,000 resident waterfowl hunters. In the mid- and late-1990s this number increased to approximately 39,000 resident waterfowl hunters. For perspective, however, in 1975 there were approximately 67,500 resident waterfowl hunters.

The following table depicts the number of licenses issued for or number of waterfowl hunters and limitations on waterfowl hunters in 2000:

NUMBER OF LICENSES OR HUNTERS AND LIMITATIONS				
	Resident Waterfowl	Nonresident Waterfowl	Special Zones for Nonresidents	License Caps for Nonresidents
North Dakota	35,992	25,165	Yes	No
South Dakota	42,034	5,624	Yes	Yes
Minnesota	136,000	Ducks - 2,505 Geese - 1,225	No	No
Nebraska	23,073	2,800	No	No

Between 1990 and 1999 the average seasonal goose bag by residents went from around 3.9 geese in the early

1990s to 4.5 geese in the late 1990s. The average seasonal goose bag for nonresidents went from about 3.9 geese in 1990 to a high of 4.57 geese in 1993 and dropped to 2.3 geese in 1999. In short, the daily success rate of residents seems to be fairly stable, as does the number of resident waterfowl hunters. However, as nonresident numbers increase, there appears to be a decrease in the success of nonresident hunters. It is unknown whether this is a measure of the ability of hunters or the availability of geese.

While residents and nonresidents have been successful in duck hunting, duck numbers have increased. The number of broods per square mile has increased fairly steadily from approximately one brood in 1992 to 6.23 broods in 2001. This includes an 8 percent increase from 2000. The May breeding duck index was up 14 percent from 2001, 129 percent above the 1948 to 2000 average and the second highest on record. Indices for all species of duck were above the long-term average, and the mallard index was the highest on record. The increase in duck numbers is not unexpected considering this is the ninth summer of exceptional water conditions across the state, conservation reserve acreage remains high, and dry conditions continue throughout much of the Canadian prairie. In addition, the fall flight of ducks in 2001, which includes adults plus young representing North Dakota's contribution to the total fall duck flight, was expected to be the highest on record. It was expected to increase 30 percent from the fall flight of 2000, which was the second highest on record.

Zone, Number, and Time Limitations

If there is certainty in receiving a license to hunt waterfowl in a certain area by nonresident hunters, nonresident hunters are able to lease hunting rights or land in the area to be guaranteed a place to hunt. At minimum it provides more time for a nonresident to plan a hunt and make arrangements to have a place to hunt. This increases the nonresident hunting pressure.

There are three ways in which hunting pressure can be reduced--geographically, numerically, and temporally. The major way to limit hunting pressure geographically is through the creation of zones. At minimum this prevents hunters in one zone from traveling to another zone upon the migration of waterfowl through this state. The major way to limit hunting pressure numerically is through reducing the number of hunters. Another kind of numerical limitation is to limit the number of birds allowed to be harvested; however, this is used more for game management than hunter management. If geographical limitations are combined with numerical limitations on hunters, zones may be tailored to provide the appropriate amount of hunting pressure caused by nonresident hunters which is tolerated by resident hunters.

Until the 2002 waterfowl season there were not any numerical limitations on nonresident hunters. If the Governor or the Legislative Assembly created a maximum number of licenses to be issued in certain zones, it would create administrative issues. To count

the licenses sold, there would need to be a centralized system of license administration. This could be done on a first-come, first-served basis or a lottery system. However, this would interfere with local sales of hunting licenses. If local sales points could be included within the centralized system, the issue of local sales would be addressed; however, it would require a real-time administration system connected to each sales point. In 2002 the Governor limited the number of nonresident waterfowl licenses to 30,000. The licenses were available only through the Game and Fish Department. Licenses could be purchased in person, on the Internet, or by telephone. The boundaries of the three waterfowl hunting zones were the same as in past years. However, Zone 3 was no longer a "free" zone. Hunters must choose one of the three zones and stay in the zone specified on their license for that time period. Nonresident hunters with 14-day licenses may hunt for seven days in one zone and seven in another. As in the past a nonresident may choose the seven-day statewide license.

The major way to lessen hunting pressure temporarily is to limit the time hunters may hunt. The variable of time may be entered into a zone to allow times in which resident hunters are preferred over nonresident hunters. As for nonresident waterfowl hunters, they generally do not hunt longer than a week. In 1999 approximately 85 percent of nonresident waterfowl hunters hunted seven or fewer days. Approximately 61 percent hunted five or fewer days.

One issue raised in the testimony was whether to disallow nonresidents from hunting in the first seven days of the fall waterfowl season. However, prohibiting nonresident hunters for this period of time may not provide an opportunity for resident hunters, as waterfowl hunting is dependent upon the timing of the migration, which is dependent on the weather. There are no guarantees with the weather. Recently most ducks and geese are harvested in the first few weeks of the season. In 1998 and 1999 about 95 percent of ducks harvested were taken in the first 30 days of the season. In 1998, 78 percent of the geese harvested and in 1999, 73 percent of the geese harvested were taken in the first 30 days of the season.

In the past the Legislative Assembly has passed resolutions asking the federal government for an earlier duck hunting season. The waterfowl season of 2002 will begin one week earlier for all waterfowl hunting. This one week will be open only to residents. Minnesota chose not to accept the earlier opener and if nonresidents would have been able to come here for that first week, this state may have had unusually high numbers of nonresident hunters.

Economic Impact

Limitations on nonresident hunters not only affect nonresident and resident hunters but also affect small town businesses, including guides and outfitters. Generally, small town businesses are against limitations on nonresident waterfowl hunters. There was copious

testimony on House Bill No. 1269 received from small town owners of restaurants, hotels, merchandise stores, and similar businesses stating the importance to the livelihood and survival of those businesses from nonresident hunters.

In *Characteristics, Expenditures, and Economic Impact of Resident and Nonresident Hunters and Anglers in North Dakota, 1996-1997, Season and Trends* by Tina D. Lewis, Jay A. Leitch, and Aaron J. Meyer, it was shown that in the 1996-97 hunting season, a resident small game hunter hunted approximately eight days and spent approximately \$1,250. Small game includes waterfowl and upland game. A nonresident small game hunter spent an average of six days hunting and expended an average of \$705 per season. The direct resident small game hunter expenditures in 1996-97 were \$113,006,000. The direct nonresident small game hunter expenditures in 1996-97 were \$13,887,000.

Small game hunters have a substantial impact on the rural economy. Urban resident waterfowl hunters make 45 percent of their expenditures in rural areas. At \$494 per hunter, this results in \$10,827,000 spent in rural areas. For upland game, urban resident hunters make 42 percent of their expenditures in rural areas. At \$637 per hunter, this results in \$17,995,000 spent in rural areas. This results in urban resident hunters spending \$28,822,000 in rural areas. Nonresident hunters make 78 percent of their expenditures in rural areas. At \$536 per hunter, this results in \$10,566,000 spent in rural areas. Although nonresidents do not spend as much as residents as individuals or a group, the money spent is new money in the state's economy.

A summary of the economic impact of nonresident hunters in North Dakota for the year 2001 prepared by the Department of Agribusiness and Applied Economics, North Dakota State University:

...[]Indicates that the 23,209 nonresident hunters resulted in a total economic contribution of more than \$62,000,000 to North Dakota's economy in 2000. Guided hunters accounted for almost \$30,000,000 of this total.

The increased level of economic activity resulted in about 890 new jobs being generated in the state economy, in addition to the persons directly employed in guided hunting activities. Guided hunting alone accounted for about 375 new secondary jobs.

The increased economic activity also resulted in added state tax revenues totaling more than \$1.5 million.

Guides and Outfitters

Generally, testimony from guides and outfitters is against limitations on nonresident hunters. Guides and outfitters have invested money and leveraged property to provide food, lodging, and hunting services, mainly used by nonresident hunters. To market these packages, guides and outfitters require some certainty that a client will receive a license to hunt and have the opportunity to

hunt in an area in which the guides and outfitters are located. One way in which guides and outfitters guarantee land will be available to hunt on is by leasing historically prime areas for waterfowl hunting for hunting rights.

The leasing of land by guides and outfitters limits the geographic area in which resident hunters may hunt without paying for access. It also requires long-term planning for resident hunters who wish to use guide and outfitter services. This long-term planning and expense may not provide as good an opportunity as waiting for waterfowl to arrive and then securing a location to hunt because the availability of waterfowl is dependent upon the weather. If a hunter is to plan to hunt for a certain period of time with a guide or outfitter on certain property owned or leased by the outfitter, there may be no waterfowl on that land at that time.

Under NDCC Section 20.1-01-02(14), a guide or outfitter is "any resident who holds oneself out to the public as a guide or outfitter, and who provides, for compensation, transportation, equipment, arrangement of lodging, or that person's own or another's personal services for the primary purpose of assisting a person or persons to locate or catch fish or to locate, pursue, or hunt small game, big game, or fur-bearers." This section prohibits nonresidents from acting as guides or outfitters in this state. An individual may be a hunting guide or outfitter, a fishing guide or outfitter, or both.

Besides the hunting and fishing categories, there are two kinds of guides and outfitters—certified and regular. A certified guide or outfitter must first qualify as a regular guide or outfitter and pay a license fee. Under NDCC Section 20.1-03-37 an individual may not be a regular guide or outfitter unless that individual is licensed. Under Section 20.1-03-12(34), (35), and (36) the annual license fee for a hunting guide or fishing guide is \$100, and the fee for both is \$150. A regular guide or outfitter may not hunt on land owned by or private land enrolled with the Game and Fish Department for the purpose of hunting, provide services to a person who has not obtained the appropriate license, or willfully and substantially misrepresent that individual's facilities, prices, equipment, services, or hunting or fishing opportunities. Private land enrolled by the Game and Fish Department includes the private land open to sportsmen (PLOTS) program and coverlocks program. There are approximately 160,000 acres of PLOTS land and 5,500 acres of coverlocks land open to hunting in this state.

A certified guide or outfitter is subject to additional requirements. A certified guide or outfitter is required to have proof of general liability insurance in the amount of at least \$100,000 per individual and \$300,000 per incident, to be certified in adult cardiopulmonary resuscitation, and to be certified in standard first aid or its equivalent. A certified guide or outfitter does have an additional privilege. Under NDCC Section 20.1-03-11.2 the Governor is required to make one-half of the antlered whitetail deer licenses and permits allocated to nonresidents, up to a maximum of 100 licenses, available to certified guides or outfitters. This section limits the number of whitetail deer licenses that a certified guide or

outfitter may purchase to five per year. This section requires the guide or outfitter to pay the fee for the whitetail deer license. A certified guide or outfitter may provide to nonresidents, for compensation, big game guiding and outfitting services and one whitetail deer license per nonresident to hunt whitetail deer. Under Section 20.1-03-12(42) the fee for a whitetail deer license sold to a certified guide or outfitter and provided by them to a nonresident is \$250.

North Dakota Century Code Section 20.1-02-05, which enumerates the powers of the Game and Fish Department director, provides in subsection 17 that the director may adopt rules for the licensing of guides or outfitters and may require records and reports as the director determines necessary. In addition the director may revoke or refuse to renew the license of any person who violates the rules or fails to provide the records and reports.

Under this rulemaking authority, the director, under North Dakota Administrative Code (NDAC) Section 30-04-03-01, has made being a guide or outfitter without a license a noncriminal offense with a \$250 fee. In addition, under NDAC Section 30-04-03-06, an individual licensed as a guide or outfitter must be "well versed in the hunting laws of North Dakota and in federal laws pertaining to hunting in North Dakota," and it is the guide's or outfitter's responsibility to ascertain that each client is familiar with these laws. The rules also provide for consumer protection provisions that require the guide or outfitter to provide a list of charges before contracting for services; a receipt with the guide's or outfitter's signature, address, and license number; and a written contract listing the services and accommodations, the fee, and the time period of the contract. In addition, under NDAC Section 30-04-03-09, guides and outfitters are required to keep current records of all transactions for three years which are subject to inspection by the Game and Fish Department or any law enforcement officer.

Under NDAC Section 30-04-03-10 the director of the Game and Fish Department is to revoke or refuse to renew the license of a guide or outfitter who is convicted of violating any game or fish law in this state, is convicted of violating any federal law pertaining to hunting, fishing, or trapping, fails to comply with any rules relating to operating as a guide or outfitter, or engages in conduct detrimental to the image and professional integrity of the guiding and outfitting industry. According to a representative from the Game and Fish Department, this section is used and is effective against an individual guide but does not directly affect that particular guiding business.

Another prohibition on areas where guides and outfitters may hunt is in NDAC Section 30-04-02-09. Under this section an individual may not engage in a commercial enterprise on a state wildlife management area unless authorized by the Game and Fish Department. According to a representative from the Game and Fish Department, guides are authorized if they comply with federal permit requirements.

In 1996 the Game and Fish Department adopted rules to govern the activities and licensing of hunting and

fishing guides and outfitters to become effective on January 1, 1997. Among other things these rules would have required proof of liability coverage, certification in adult cardiopulmonary resuscitation, and certification in standard first aid for all guides or outfitters. During review of the rules by the Legislative Council's interim Administrative Rules Committee, committee members observed that several issues covered in the rules had been the subject of proposed legislation that failed in 1995. The committee approved a motion to void the rules because the rules were the topic of failed legislation, created policy that should be the subject of legislation for consideration by the Legislative Assembly, and appeared to be a fence-building effort by the Guides and Outfitters Association. Representatives from the Game and Fish Department countered that the department was advised by individual legislators during the 1995 legislative session that these issues should be addressed through administrative rules and that the department tried to accommodate that suggestion in working on these rules. Representatives from the department agreed to further amend the rules to eliminate the previously listed requirements in the rules that were controversial. Upon agreement with the department on the additional amendments, the committee withdrew its motion to void the rules.

The number of hunting guide and outfitter licenses has increased fourfold since 1990. In December 2001 there were 332 licensed hunting guides. There were 82 licensees in 1990, 141 in 1995, and 270 in 2000. The only reduction in the number of hunting guides and outfitters was in 1997. In 1996 there were 164 licensees and a similar number--171--in 1998. However, in 1997 there were 122 licensees, a drop of approximately 25 percent in one year.

After the agreement with the Administrative Rules Committee, the Game and Fish Department adopted rules that created the requirement that a guide or outfitter is required to furnish each client a written contract and removed the requirement that records of all guide or outfitter transactions be filed in the Game and Fish Department office in Bismarck each year.

Landowners

There are impacts on others besides nonresident hunters if zones are created. The creation of zones creates a problem for nonresident landowners with land in different zones and with resident landowners who lease land or provide fee hunting to nonresidents with land in different zones. Zones limit the full use of the land by landowners.

During the 1999-2000 interim the Legislative Council's interim Agriculture Committee studied depredation caused by wildlife and damage caused by hunters. The committee received testimony from landowners. Historically, the major concern of landowners has been depredation caused by waterfowl and damage caused by hunters. More recently landowners have been concerned with gaining a secondary income through hunting. Sometimes this secondary income is needed to

cover the cost of depredation. The legislative history for House Bill No. 1269 did not reveal any landowner opponents against nonresident hunters over resident hunters.

License Fees

Another way to limit competition is by increasing the cost to nonresident hunters. However, the legislative history reflected that the increase in House Bill No. 1468 was not enough to stop most nonresident hunters. The other reason for increasing the fees was to make them equal with surrounding states.

One solution that was discussed in the testimony--to make fees equal besides raising this state's fees--was reciprocity and having nonresidents pay what residents of this state would pay in that nonresident's state. This idea was considered administratively burdensome.

A concern with increased fees was what the Game and Fish Department would do with the fees. The Game and Fish Department has \$18 million to \$20 million in reserve. One area in which it was suggested extra income could be spent by the department was increased habitat and access programs, including the PLOTS program. According to the department if additional revenue were generated through increases in license fees, habitat and access programs would be the focus for expenditures of those funds. This would take money from nonresidents and use it for more access to hunting for residents. During the 1999-2000 biennium the department spent in excess of \$1.2 million for habitat and access programs on private lands. Proposed budgets for habitat and access programs for the 2001-03 biennium are in excess of \$2.5 million.

Testimony and Discussion

Introduction

The committee received testimony that the resident hunters were becoming dissatisfied with their hunting experiences. The main reason for the dissatisfaction was that nonresident hunters and guides and outfitters were competing for access through purchase of land or leasing of hunting rights or by competing for the hunters' use of land. These complaints mainly came from waterfowl hunters and mainly from duck hunters.

Resident hunters suggested a number of solutions. As to the regulation of nonresident waterfowl hunters, the main request was for a limitation on the number or nonresident waterfowl hunters. As to the regulation of guides and outfitters, the main request was for increased qualifications, including a separate license for guides and a separate license for outfitters, limitations on the number of outfitters, and limitations on the number of acres guides can control. The regulation of nonresidents and guides and outfitters was suggested as a means of increasing access for resident hunters by placing restrictions on the main competitors with residents for access. Resident hunters also suggested enhanced access programs that would compete with guides and outfitters and nonresidents for access.

In particular, resident hunters suggested the following limitations on nonresident hunters:

1. A reasonable cap on the number of out-of-state duck, geese, and upland game hunters.
2. Four or more zones in this state for out-of-state waterfowl hunters and a cap on the number of licenses for each zone.
3. A lottery by the Game and Fish Department for successful applicants for each zone.

To soften these limitations, resident hunters suggested the following:

1. A preference for hunting licenses for individuals who were born in this state and who now live elsewhere.
2. Allocate 20 percent of the nonresident hunting licenses to licensed guides.

The difficulty with any solution that would be acceptable to the resident hunters is that it may have a negative impact on economic development created by nonresident hunters. The hospitality industry, guides and outfitters, and landowners argued against limitations on nonresidents because of the negative economic impact these limitations would have on rural North Dakota businesses. To these groups, the issue of resident versus nonresident hunters is the issue of an inconvenience to resident hunters versus the livelihood of farmers and small town businesses. The committee was informed that limitations on nonresidents are not needed because there is plenty of game. The committee was informed that to manage game correctly, limitations should be based on biological reasons as determined by the Game and Fish Department.

The committee was informed that the solution for resident hunters who have problems getting access to land is to ask for landowner permission before the season or use public hunting areas. It was argued that if resident hunters do not want to pay a fee for access to land they can use public land.

The committee received testimony on the causes for the reduction in resident waterfowl hunters. The committee was informed there has been a major decline in resident hunters from the 1970s. It was argued that the decline was a result of the drought and that many people have moved out of the rural areas. Committee discussion included that resident hunters are not hunting ducks because of preference.

Committee discussion included that in total numbers there are fewer hunters and more birds than 20 years ago. It was argued that until it is shown that resident hunters are being prevented from hunting by nonresident hunters, the new money coming into the state from nonresident hunters should not be jeopardized.

The committee was informed by resident hunters that access to hunting is more important than economic development because of the social value of hunting. The reason to limit nonresident hunters is to preserve the heritage of hunting much like the heritage of family farmers is preserved by anticorporate farming laws. It was argued that the social value of people living in this state and hunting is similar to people in this state living on family farms, so corporate hunting in this state should be controlled as is corporate farming. It was argued that if this state loses its quality hunting for residents, it will be

populated by a few large-scale farmers, a couple of implement dealers, some outfitters, and senior citizens.

The committee was informed that resident hunters provide economic development and that they provide better economic development than nonresident hunters. The reason some people stay in this state is hunting. It was argued that the best kind of economic development is people moving to or staying in this state. A decrease in the number of nonresident hunters will result in an increase in resident hunters, so the money for economic development will still be in the rural areas.

The committee was informed that nonresident hunting provides little new growth. The economic benefit of nonresident hunters to small town businesses is short term, and these businesses must rely on the residents the rest of the year. In addition, nonresident hunters bring their own food, gas, car, travel trailers, and other supplies and are not buying as much as in the past from the rural merchants.

The committee was informed that not one dollar of tax money from the hospitality industry goes to game management; therefore, the hospitality industry should not have a voice in game management.

Caps on Nonresident Hunters

The committee received testimony against numerical limitations on nonresident hunters. It was stated that placing limits on nonresident hunters will not help the resident hunters find more access. It was argued South Dakota has limitations on nonresident hunters; however, access and hunting is much better in North Dakota. Opinions were expressed that Minnesota has hardly any nonresident hunters, and it is difficult to get access and most limits on land access in this state come from within this state. The committee was told landowners save land for friends and family, and access in this state for deer hunting is as difficult or more difficult to get as waterfowl access, and there are hardly any nonresident deer hunters.

The committee was informed that caps are not needed because rural North Dakota cannot handle the capacity of many more out-of-state hunters because there are limited services, and nonresident hunters will not come if rural North Dakota cannot provide services.

The committee received testimony that landowners are opposed to a cap placed on nonresident hunters. The opinion was expressed that caps on the number of nonresident hunters are an end run on property rights. It was argued that if the state capped the number of urban businesses so that rural businesses could survive, it would be absurd, so limiting nonresident hunters is also absurd. Demand for property for hunting purposes increases the value of the land and positively affects landowners. The committee was informed there will be a backlash in some areas, and everything will be posted if there is a limit placed on nonresident hunters.

The committee was informed by resident hunters that although there is some concern of a backlash by landowners against hunters, it will not be major. It was argued the east/west division in this state is

media-driven, and if there is a backlash, both resident and nonresident hunters will lose access.

The committee was informed that caps should be used for conservation purposes and not for people management. The opinion was expressed that it is contradictory to have the duck season expanded one week earlier because there are so many ducks, while there is talk of placing a cap on the number of hunters. It was argued that the number of waterfowl hunters should reach the level of hunters for the time period between 1975 and 1979 for resident and nonresident hunters before imposing a cap. In addition, if there is a cap on waterfowl hunters, it was argued the cap should be for resident and nonresident hunters. Committee discussion included concern with the imposition of caps, especially considering the unbelievably high number of ducks.

The committee received testimony in favor of caps. The committee received testimony on a survey by the North Dakota Sportsmen's Alliance on attitudes of North Dakota resident hunters. The survey showed that approximately 66 percent of North Dakota hunters favor a cap on nonresident waterfowl hunters. The committee was informed that resident sportsmen have reached their tolerance limit for nonresident hunters.

The committee was informed that the cap on the number of nonresident waterfowl hunters should be set at current levels or at a level close to current levels. One suggestion was to cap nonresident hunters at a percent of the resident waterfowl hunters during the previous hunting season. Other suggestions ranged from 8,000 to 25,000. The committee considered a seasonal cap of 15,000 nonresident waterfowl hunters.

Committee discussion included that nonresident hunters come to this state because they have harvested all the ducks in their own state. It was also argued that this state cannot handle all the duck hunters if they all come at once to one place in this state. It was argued that there are too many nonresident hunters in certain areas of this state.

The committee was informed by the Game and Fish Department that it is difficult to develop a long-term plan for limiting nonresident hunters because of serious differences in philosophy. This was indicated by the deadlock as to what to do with nonresident hunters for this season with the Game and Fish Advisory Board.

The committee received testimony on three concepts for limiting nonresident waterfowl hunters--hunter pressure, fixed caps, and wetland habitat condition. The hunting pressure concept had the most interest by groups at the Game and Fish Advisory Board meetings. The hunting pressure concept uses historic averages to set the number of hunters that are allowed to hunt. The concept includes the idea that nonresidents are more intense hunters than residents based on daily bag limits. The concept assumes fewer hunters are tolerated in dry conditions. The concept does not count all wetlands but just the semipermanent and permanent wetlands. The small wetlands that are affected by short-term weather conditions are not included in the concept. The use of

licenses by residents is considered under the concept. If there are low numbers of resident waterfowl hunters, there would be higher numbers of nonresident hunters allowed to get a license under the hunter pressure concept. Once the concept is in place it can work year after year. Under the original hunter pressure concept the limit on nonresident hunters would have been 22,500 for this year.

The committee considered a bill draft that required the Governor to place a limit on nonresident hunters based upon the total hunting pressure.

The committee received testimony in favor of the hunting pressure concept. The committee was informed that the hunting pressure concept has the support of most hunting groups even though it provides for a higher cap than is wanted by most groups because the concept first deals with the resource and the water and places North Dakota residents above nonresidents. It was argued that the concept uses science and not politics to set the cap.

The committee received testimony against the hunter pressure concept. The committee was informed the concept does not look at conservation more than it looks at people management. The committee was informed that guiding for waterfowl takes place on fields as well as wetlands. It was argued that there are a lot more areas to hunt than are being considered under the hunting pressure concept. The committee was informed the hunter pressure concept does not take into account when numbers of hunters spike during the season, for example, during parent-teacher conferences.

Committee discussion included that a reduction from 30,000 to 22,500 nonresident hunters would result in the loss of fees and federal funds to the Game and Fish Department in the amount of approximately \$2.5 million. This money could be used for access. It was argued that limiting the number of nonresident hunters will hurt the Game and Fish Department.

Committee discussion included that the bill draft may need changes, for example, a lottery or providing an allotment to guides and outfitters, which can be added during the legislative session.

The committee was informed of a plan that would divide October into four weeks, and 7,500 nonresident hunters would be allowed to hunt per week. The plan would reduce the concentration of nonresident hunters by 50 percent in the first two weeks and while keeping 30,000 nonresident waterfowl hunters in this state. This idea would produce less pressure in the best hunting times. November could be used as an incentive to get nonresidents back into the state to hunt in quieter times.

The committee considered a number of weekly or time period-based caps ranging from 5,000 to 10,000 nonresident hunters per period. Because caps are involved, the licenses must be issued by the Game and Fish Department on a first come, first served basis or through a lottery. To soften the effect of the caps on guides and outfitters, the committee considered combining the caps with 10 percent of licenses reserved for guides and outfitters.

The committee received testimony in support of time period-based caps. The committee was informed that the time period-based caps allow growth while managing hunters.

The committee received testimony against the time period-based caps and lotteries from the North Dakota Professional Guides and Outfitters Association. A guide or outfitter cannot guarantee a tag if the tag is issued through a lottery. Because most people hunt in groups and need the whole group to get a license before they will come hunting, it was argued that a lottery will have a negative impact on guides and outfitters and this state.

Committee discussion included that guides and outfitters can still have clients who get tags through the lottery system--the other 90 percent. The 10 percent is reserved for guides and outfitters and the 10 percent could be saved for hunters who plan late.

Committee discussion included that a lottery system is meant to be done far enough in advance to provide hunting parties with enough time to plan. It was envisioned the lottery system to be like the deer lottery, which allows party applications. The 10 percent of licenses for guides and outfitters could be used by guides and outfitters to give a license to a person in a group who was otherwise denied through the lottery.

The committee considered a bill draft based on the time period-based plan. The bill draft had no hunting zones and three blocks--two 10-day periods with a limit of 10,000 nonresident hunters for each 10-day period followed by a block of the remainder of the season with unlimited nonresident hunters. The licenses would be issued on a first-come, first-served basis from the Game and Fish Department.

The committee received testimony in opposition to the bill draft because of preference for the hunting pressure concept.

The committee received testimony in support of the bill draft. It was argued that a bill draft with fixed caps provided protection for high-density periods, whereas under the hunter pressure concept there could be 22,500 hunters at one time, at one place. It was argued that a fixed cap bill draft allows for rural development by creating an attraction for late season hunting when there has historically been a low density of nonresident hunters.

It was argued that landowners will be happier with this bill draft than with the hunter pressure concept. Landowners are upset over this issue and are posting their land. This bill draft buffers that idea because it allows unlimited licenses after the 20th day. It was argued that the bill draft provides for a compromise and is incentive-laden, not punitive like the hunter pressure concept.

Committee discussion included that the hunting pressure concept may work well for resident ducks but does not work well for migratory ducks and geese. The migratory birds are the major part of the season.

The committee considered that the first 10-day period this season would have two full weekends and the second 10-day period would only have one weekend under the bill draft. Comments suggested that at some

time a change should be made to take this inequity into account.

Committee discussion included that the committee needs to look at every option and this is a valid option. Nonresident hunters bring in major tax revenue to the state, in addition to economic development.

Committee discussion included opposition to the bill draft. It was argued that the committee had considered a bill draft similar to this one, but that bill draft was removed from further consideration in favor of the hunting pressure concept bill draft. It also was argued that fees should be higher under the bill draft because the bill draft allows for some hunting for an unlimited amount of time.

Committee members supported the idea of forwarding more than one concept to the Legislative Council.

Preference in Cap

The committee received testimony on providing a preference in the cap for nonresident hunters who were born in this state. It was argued that a preference would be difficult to administer.

The committee considered a bill draft that would have created a special private property license for nonresident waterfowl hunters. The bill draft would have created a season-long license for nonresidents to hunt solely on private property owned or leased by a person who actively farms or ranches on that property. The special licenses would be in addition to the caps placed on regular licenses. An individual could get a regular and a special license. An individual with a special license could hunt throughout the season without any limitation on the number of days.

Committee discussion included opposition to the bill draft but not the intent of the bill draft. It was argued that a leasing arrangement by a nonresident might allow for that nonresident to receive a special license under the bill draft. This would increase the purchasing and leasing of land by nonresidents in this state.

Committee discussion included support for changes to ensure that the nonresident and the active farmer or rancher who owns the land on which the nonresident hunts were not the same person.

The committee considered a bill draft that would have created a special private property nonresident waterfowl resident license. The bill draft would have removed leased property and included the qualification of residency. In addition, the bill draft would have required the applicant to be related by the third degree of consanguinity or have been a resident of this state for one continuous year. The changes closed opportunities that would encourage guides and outfitters and others to purchase land to use this license to hunt, thereby superseding present hunting licenses.

The committee received testimony in opposition to the bill draft. The committee was informed the bill draft would prevent landowners from doing whatever they want to do with their land. The committee was informed the restrictions on land have increased greatly in the past

20 years and that landowners do not want any more restrictions.

Committee discussion included that the bill draft merely provides another option for nonresident hunters. Regular licenses are still available for people to use on land they buy or lease for hunting purposes. Committee discussion also included, however, that the committee did not want to limit what landowners could do with their land.

Access to Private Land

There are 45 million acres of private land in this state. There are approximately 4.5 million acres of state and federally owned land in this state, and of that amount 2.5 million acres are open to hunting.

The Game and Fish Department owns approximately 78,000 acres and leases about 100,000 acres. The department has been trying to increase access in recent years. There was a 12.2 percent increase in the last biennium's budget and most of this money went for access through the private lands initiative. The department intends to double the acres in the PLOTS program in the next three years and triple the acres in the program over eight years. The money for this increase will come from the reserve fund. The new money for access will not go into the coverlocks program.

The problem with buying access is there is only so much good hunting land that is available to be acquired for hunting access. The main lack of access is in certain areas popular with hunters.

The committee received testimony in support of an access program administered by the Game and Fish Department. The committee was informed that there should be an access stamp with a fee of \$25 to \$50. Money from the access stamp would go into a land access fund to purchase access. Contracts for access could be negotiated on an individual basis and renewed annually. Access could be controlled as per contract for each parcel of land. One option would be for the land to be divided into smaller parcels that would be available on a draw basis, prorated between residents and nonresidents. The parcels could be allocated on a weekly basis to the winner of the draw for that week. The winner of each weekly draw could bring as many friends as that person wants as long as the winner is present.

The committee received testimony in support of more funding for public access. Support came from resident and nonresident hunters and guides and outfitters. The access program would provide income to landowners and would reduce the inconvenience on landowners from having a constant procession of people asking for access. An access program would provide an option to landowners other than to lease land to a guide or nonresident.

The committee received testimony on fee hunting. The committee received testimony from resident hunters who said they were not able to afford access because of fee hunting. Some resident hunters cannot afford to pay what is being charged to nonresidents to fee hunt. It is common for landowners to charge \$200 per gun, and it

is difficult to receive permission to hunt without paying a fee.

The committee was informed there does not seem to be evidence of a problem with obtaining access from landowners. A 1996 survey by the Game and Fish Department showed that 83.6 percent of landowners give permission when asked to hunt.

Committee discussion included that although some committee members did not like fee hunting, the members believed it is the right of the landowner to charge for hunting.

The committee received testimony against the leasing and buying of property for hunting purposes. The committee was informed that one of the major limitations on access was the leasing of property by out-of-state hunters and guides and outfitters. However, a study in the early 1990s found less than 1 percent of the land in this state was leased for hunting purposes at that time. It was argued that a more accurate survey would be difficult to complete and the results should be suspect because of the animosity surrounding access issues. The committee was informed the trend to buy and lease land for hunting purposes is increasing for residents and nonresidents.

The committee received testimony on the extent of land leasing and purchasing. The committee surveyed certain county recorders, but the survey did not provide significant information to make any generalizations.

Committee discussion included that if land is bought solely for hunting purposes, then it may be used only the first week or two of the season by the owner for hunting and be closed to everyone the rest of the season. This impedes the management of the resource by the Game and Fish Department. It was argued that purchase of land for hunting purposes can result in moving people out of the rural areas and is not good for North Dakota.

The committee received testimony on taxing land used for hunting purposes at a higher rate than agricultural land. It was argued that nonresidents who purchase land for recreational purposes should pay a recreation tax instead of an agricultural property tax. There is precedent in other states in which recreational property is taxed at a higher rate. However, it was argued that basing taxes on the purpose for which the land was purchased would be difficult to administer.

Guides and Outfitters

The committee was informed the greatest problem threatening resident hunters is the proliferation of licensed guides because guides are the main limitation on access. It was argued that it is too easy to be a guide, and resident hunters made the following suggestions:

1. Cap the number of guide licenses.
2. Increase the annual guide license fee.
3. Require guides to have insurance and know first aid and cardiopulmonary resuscitation.
4. Prohibit guides from carrying weapons.
5. Prohibit guiding on public land of any kind.
6. Require a complete recordkeeping.

7. Raise the penalty for guiding without a license to a three-year suspension of hunting privileges.
8. Test guides on game laws.
9. Limit guides in the amount of land guides may lease.
10. Impose sales taxes on guide services.

The committee was informed there needs to be limits on the number of acres guides and outfitters control. Research over the Internet resulted in finding four or five guides who had approximately 140,000 acres advertised for hunting. It was argued that a reasonable limit would be 6,000 to 7,000 acres or about 10 square miles. However, if the number of acres a guide can lease is limited, guides will move to a day pay system based on the days hunted and number of people hunting. It was argued that a limitation on the number of acres a guide and outfitter can control would not be a workable solution.

The committee was informed there should be aggressive enforcement of present laws and an increase in the number of game wardens. There have been a number of cases this year for the prosecution of guides and outfitters for game and fish violations. The Game and Fish Department has stepped up its activities with covert operations to enforce game and fish laws, and there are more violations than were expected by the department.

The committee was informed that guide and outfitting services should be subject to sales taxes because guides are selling a public resource as a product. Presently, guiding is not a taxable service under North Dakota law, although guides pay income taxes and collect sales taxes on lodging.

The committee considered a bill draft to require general liability insurance, cardiopulmonary resuscitation, and standard first aid for all guides.

Cardiopulmonary resuscitation and first aid require two 4-hour classes. It was argued that guides and outfitters take clients to remote areas and cardiopulmonary resuscitation and first aid should be required of guides and outfitters.

Committee discussion included arguments against the bill draft and against more government involvement in business. It was argued that the law does not require liability insurance for other businesses and should not require liability insurance for guides. Committee discussion included that a more comprehensive approach is needed for the regulation of guides and outfitters. The committee makes no recommendation on requiring guides to carry general liability insurance and be certified in cardiopulmonary resuscitation and standard first aid.

Testing of Guides and Outfitters

The committee considered a bill draft to require the Game and Fish Department to create and administer a written examination to test the proficiency of hunting guides and outfitters in state and federal laws on the hunting of wild game. Presently the department does nothing to check the familiarity of guides with the law. The director has rulemaking authority to require testing; however, because previous rules have been voided the

department will not adjust rules on testing without specific legislative authority.

The committee was informed the administration of a test on game and fish laws could be done easily by the department; however, administration would be more difficult if there were an educational component. In addition it would be an administratively difficult matter to develop rules for when individuals fail the test. The department envisions the test being administered at certain times and places.

The committee received testimony in favor of the bill draft. The North Dakota Professional Guide and Outfitter Association supported of the bill draft. The association represents approximately one-third of guides and outfitters. Approximately 75 percent of the association's members are ranchers and farmers.

Records of Guides and Outfitters

The committee considered a bill draft that required guides and outfitters to provide an annual report of the names and addresses of that guide's or outfitter's clients for the preceding year to the Game and Fish Department. Presently, records are kept by guides and outfitters and inspected by game wardens. The records are checked regularly at the guide's or outfitter's place of business, and if the records are used in an enforcement action, they are confidential. Although the records are regularly checked, clients are not randomly contacted. Clients are contacted based upon a complaint and complaints are forwarded to the Attorney General's Consumer Protection Division. At one time rules required that the records be submitted to the department; however, this requirement was removed because of concerns that private information was being released as public records.

The committee received testimony in opposition to the bill draft. Guides and outfitters opposed the bill draft because it required them to turn over private information. The client list is a valuable part of a guide and outfitter's business.

The committee considered a second draft that required that the records be confidential and not public records subject to the open records law. The second draft required the director to disclose the names and addresses to a state or federal tax agency for tax enforcement purposes upon the request of the agency.

The committee was informed the North Dakota Professional Guide and Outfitter Association has no major problem with the annual report if it is kept private.

There was testimony in opposition to the bill draft. The committee was informed there was a concern with the uses of the list, and the records requirement would make it more difficult to start and maintain a small business. Committee discussion included that other businesses are not required to file information relating to customers, and it would not be fair to require this of guides and outfitters.

Committee discussion included support for the bill draft. The discussion included that the reason for the bill draft was to easily allow a cross-check so that there would be less income tax evasion for guides and

outfitters paid with cash. It was argued that the bill draft protected guides and outfitters because the director presently could request the information and it would not be confidential.

Committee discussion included if the concern is that cash income is not being reported, then it is the Tax Commissioner's duty to investigate, not the Game and Fish Department's. The Tax Commissioner can receive the information now, and it is protected by law.

Committee discussion included the suggestion of removing the language relating to tax enforcement purposes. Committee discussion included separating the idea of requiring the information to be sent and the idea of keeping the information private.

The committee considered a third draft that required the director to keep proprietary information collected from guides and outfitters confidential except for aggregated information used for statistical purposes. The bill draft did not include tax enforcement language.

The committee was informed there is very little statistical information relating to guides and outfitters, particularly, relating to the number of days hunted and the amount paid. Days hunted, how many clients, how long they stayed in the state, and what part of the state they hunted in would provide useful information to the department. The department could ask for this information presently; however, the department would have to go to each guide and outfitter and then survey the clients.

Committee discussion included that the important concept of the bill draft is to allow the Game and Fish Department to collect information on the guide and outfitter industry. Without the information, it was expressed that all the information received is based on emotion or anecdote.

Committee discussion included that the information the department finds useful could be gained by surveys of hunters. A survey of hunters, however, would not get to the root of the questions that are needed to be asked. It was argued that there needs to be a survey of the guide and outfitter operations and the information obtained should be confidential.

Licensing of Guides and Outfitters

The committee reviewed information on the guide and outfitter laws of Alaska, Colorado, Idaho, Montana, New Mexico, Oregon, South Dakota, and Wyoming. Some states regulate outfitters differently than guides, some states require a guide to work for an outfitter that is a business entity, and some states regulate guides and outfitters through a state agency and others through a self-governing board.

The committee had received information on some states that have mountainous country and dangerous game. It was argued that comparing those states' regulation of guides and outfitters to the regulation in this state is like comparing apples to oranges. The committee was informed that in states in which the majority of guided hunts are for waterfowl, there is little or no regulation.

The committee received testimony on regulating guides and outfitters separately. The committee was told that guides and outfitters should be licensed separately because a person could have an outfitting business and have employee guides violate game and fish laws and still stay in business in this state. The terms "guide" and "outfitter" have the same legal definition in this state.

The dichotomy between guides and outfitters began in mountain states. Other states treat an outfitter as a business and a guide as an individual who works for that business. In other states, outfitters are regulated like liquor stores, and guides are treated like employees. In the same way as the liquor store is punished for certain violations by employees, outfitters could be punished for violations by guides.

The North Dakota Professional Guide and Outfitter Association supports separate regulation of guides and outfitters, higher fees, a cap on outfitters, random drug testing, and a requirement that outfitters be residents of this state. The association indicated that a license cap of 300 outfitters may be appropriate. An outfitter could have as many employee guides as is desired by the outfitter. If the number of guides and outfitters is capped, current guides and outfitters should be "grandfathered in" so that no one is put out of business. The association proposed that any increase in guide license fees should go to habitat programs. This would allow guides and outfitters to give something back to the resource they use.

The committee was informed that guides should not have to be residents of this state. Requiring guides to be residents of this state denies employment to nonresidents and prevents individuals with expertise from working in this state.

Board of Guide and Outfitters Bill Draft

The committee considered a bill draft that would have provided for licensing by a board of guides and outfitters. The bill draft provided for different licenses for hunting guides, hunting outfitters, and fishing outfitters. The bill draft retained present law and established a board. The bill draft placed a number of conditions on guides and outfitters, including drug testing.

The committee received testimony in support of the bill draft. The committee was informed the association preferred appointment of members by the association to avoid political considerations.

A large penalty for being a guide or outfitter without a license was suggested. It was argued that removing the license from a guide or outfitter for a violation is a more severe punishment than a Class B misdemeanor.

The 300 hunting outfitter limit in the bill draft was suggested because of public pressure, but this number still allows more than enough hunting outfitters.

Committee discussion included concern over the establishment of the board to govern guides and outfitters.

Regulation of Guides and Outfitters by Department Bill Draft

The committee considered a bill draft that provided for the licensing of guides and outfitters by the Game and Fish Department. The bill draft increased the license for a hunting outfitter to \$200 if the outfitter would employ one to three guides that year, \$500 if the outfitter would employ 4 to 10 guides that year, and \$750 if the outfitter would employ more than 10 guides that year. A landowner was excepted from the fee, but the exception would not apply to leased land. The license would not be transferable. A guide and outfitter would have to be a resident. A person would have to hold a hunting guide license for five years to be eligible to apply for a hunting outfitter license. Present hunting guides were grandfathered in as outfitters regardless of experience. The Game and Fish Department director could not issue a license to a person who has had any state or federal game or fish violations in the last three years. Applicants were subject to a background search. The number of hunting outfitters would have been limited to no more than there were in the preceding year, but no more than 332. Hunting-related violations would result in mandatory revocation of a license. An outfitter was made liable for the violation of a guide, and a guide was made liable for the violations of a client. A person who lost a license would be prevented from transferring the license to a strawman by a prohibition on the use of the violator's name, place of business, or telephone number for three years from a violation except on permission from the director. The bill draft was otherwise similar to the original bill draft on regulation by a board.

The committee was informed the language in the bill draft which provided for mandatory revocation for a guide or outfitter who has provided services for a person who has not obtained the appropriate license for the species sought by that person was intended to be an antipoaching law and not to include a person who accidentally shot a doe with a buck license. Although the department has rulemaking authority over the licensing and could clarify this issue through rulemaking, it was suggested that any clarification should be made legislatively.

The committee received testimony in support of the bill draft and for changes in the bill draft from hunters and the association. The committee was informed the definition for outfitter includes motel operators and sporting goods stores, and if that was not the intent, the definition should be narrowed. It was argued that losing a license or not being able to get a license for any state or federal game and fish violation was too severe and that loss of a license should be limited to a criminal

violation. The committee was informed the cap on hunting outfitters by limiting the member to the preceding year's numbers could reduce the number of outfitters to a very low number through retirements. It was argued that there should be a fixed cap of 300 outfitters. The committee was informed that a 300 outfitters cap would provide great opportunity for growth, because there currently are probably 50 to 100 outfitters. It also was argued, however, that the cap of 300 outfitters is too high, and the limit on the number of hunting outfitters should be between 100 and 110.

The committee was informed the Game and Fish Department private habitat and access improvement fund does not include funds for public boat ramps. Committee discussion included a preference that the money collected from fishing outfitter licenses go to lake access.

The committee received testimony in opposition to the bill draft. It was argued that because the bill draft placed caps on hunting outfitters, it limits what individuals can do with their property. Committee discussion included that there is no other industry that is limited as to the number in that industry besides alcohol establishments. Committee discussion included some opposition to the bill draft because states situated in similar situations to this state, e.g., South Dakota, do not have any regulation of guides and outfitters. In addition, guides and outfitters provide a valuable service and employ people in rural areas.

The bill draft was amended to require a criminal conviction for a loss of license, to not have fishing outfitter license fees go into the private habitat and access improvement fund, and to set the cap for outfitters at 200.

Recommendations

The committee recommends Senate Bill No. 2048 to set a limit on nonresident hunters based on total hunting pressure. The committee also recommends Senate Bill No. 2049 to provide for two consecutive 10-day blocks with a limit of 10,000 nonresident waterfowl hunters per block.

The committee recommends House Bill No. 1048 to require guides and outfitters to be tested on state and federal laws on the hunting of wild game.

The committee recommends House Bill No. 1049 to require the director of the Game and Fish Department to keep proprietary information collected from guides and outfitters confidential.

The committee recommends House Bill No. 1050 to provide for comprehensive licensing of guides and outfitters by the department.

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 money are in compliance with law, legislative intent, and sound financial practices.
- 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 Senators Ken Solberg (Chairman), Randel Christmann, Dwight Cook, Duaine C. Espegard, Jerome Kelsh, Jerry Klein, and Kenneth Kroepelin and Representatives Ole Aarsvold, Rex R. Byerly, Jeff Delzer, RaeAnn G. Kelsch, Doug Lemieux, Andrew G. Maragos, Bob Skarphol, Mike Timm, Francis J. Wald, and Lonny Winrich.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2002. The Council accepted the report for submission to the 58th Legislative Assembly.

During the 2001-02 interim the State Auditor's office and independent accounting firms presented four performance audit and evaluation reports and 73 financial or information technology application audit reports. An additional 65 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 2001-02 interim:

1. Receive the annual audit report for the State Fair Association (NDCC Section 4-02.1-18).
2. Receive the annual 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 annual reports on the writeoffs of accounts receivable of the Department of Human Services and Developmental Center at Westwood Park, Grafton (NDCC Sections 50-06.3-08 and 25-04-17).

4. 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.)
5. 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.)
6. Receive the biennial performance audit report on Job Service North Dakota (NDCC Section 52-02-18).
7. 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.)
8. Determine the frequency of audits or reviews of state agencies (NDCC Section 54-10-01(2)).
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. Receive from the Information Technology Department a report on the development of performance measures to assist the Legislative Assembly in determining the effectiveness and efficiency of the department's operations, pursuant to Section 9 of 2001 Senate Bill No. 2043; and the annual report on state information technology projects, pursuant to NDCC Section 54-59-19.

SUGGESTED GUIDELINES FOR PERFORMING AUDITS OF STATE AGENCIES

The committee received information on and reviewed the 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 reports address the following with respect to a particular agency:

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, and rules 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 2001-02 interim addressed the 12 audit guidelines developed by the committee. Audits of boards and commissions are not required to address the 12 audit guidelines. The committee received a Legislative Council staff review of the history of the audit guidelines. The purpose of the guidelines is to aid auditors in the development of audit programs and reports, so the audit reports will be of maximum value to the appropriate authority and the taxpayers of North Dakota. The guidelines were developed to assist the committee in meeting its statutory responsibilities and to encourage state entities to improve fiscal practices. Auditors generally review the answers to the 12 areas in the presentation of the audit report, and the areas are addressed in a positive manner, indicating agencies take the issues seriously and attempt to comply. Areas that are not addressed in a positive manner may alert the committee to areas needing additional review. Elimination of the 12 guidelines may send the message to agencies that these areas are no longer of importance to the committee. The committee plans to review the guidelines at future meetings to determine if they need to be updated.

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, 2001 and 2000. The firm presented its audit report at the committee's November 26, 2001, meeting. The audit report contained an unqualified opinion and did not include any findings or recommendations.

PERFORMANCE AUDITS AND EVALUATIONS

Service Payments for Elderly and Disabled

A representative of the State Auditor's office presented the performance audit report of the service payments for elderly and disabled (SPED) and expanded SPED programs for the period July 1, 1998, through December 31, 2000. The performance audit report contained 13 recommendations, including:

- The Department of Human Services should review controls in the Medicaid management information system (MMIS) and take appropriate actions to ensure that SPED and expanded SPED claims are processed correctly and efficiently.
- The Aging Services Division should provide additional guidance for case management.
- The Aging Services Division should make improvements to the screening requirements and processes used to enroll applicants as qualified service providers.
- The Aging Services Division should implement procedures and establish controls related to clients' self-declarations of income and assets.

The committee received testimony from representatives of the Department of Human Services regarding the performance audit report. The committee learned that prospective service providers must sign a statement indicating they have no criminal record, and the department's policy is to take action against any individual who has not truthfully completed the statement. The committee accepted the performance audit report on SPED and expanded SPED.

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 contracts for services with "outside" vendors, the safety and loss prevention programs, the Special Investigation Unit, the Claims Department, the Policyholder Services Department, the governance of the Workers Compensation Board of Directors, performance measures used by the agency, and whether the agency followed all the laws in construction of the new Workers Compensation Bureau building. The

evaluation was conducted by Eide Bailly LLP. The resulting report included 80 recommendations, including:

- The Workers Compensation Bureau should renegotiate the contracts with external disability management contractors from a flat fee to an hourly basis with a limit on total hours.
- The Workers Compensation Board of Directors should determine the overall goals of the organization in advance of the goal setting performed by the functional areas.
- The Workers Compensation Bureau should consider employer incentive and penalty systems to produce timely reporting of claims.
- The Workers Compensation Bureau should develop a continuing education plan for all loss prevention specialists.
- The Workers Compensation Bureau should reduce the current caseload of the Special Investigation Unit director to allow for more time to manage other investigators.

The committee received testimony from a representative of the Workers Compensation Bureau indicating the agency agrees with and has taken steps to implement nearly all the recommendations included in the report. The committee accepted the performance audit report on the Workers Compensation Bureau.

The committee learned the construction of the new Workers Compensation Bureau building was on schedule, and the cost of the project was under budget. A representative of the Workers Compensation Bureau estimated the completion date for the Workers Compensation Bureau portion of the building to be May 1, 2003, and the total cost of the building to be approximately \$11.5 million. The performance audit report did not contain any recommendations relating to construction of the new building.

Job Service North Dakota

Pursuant to NDCC Section 52-02-18, a biennial performance audit was conducted of Job Service North Dakota. The evaluation included an examination of the unemployment insurance trust fund, the unemployment insurance suitable work and reemployment process policy, the performance and cost-effectiveness of the unemployment insurance tax and benefit payment processes, and an administrative and total cost analysis. The audit was conducted by Brady, Martz & Associates, P.C., Certified Public Accountants, Bismarck. The resulting report included 16 recommendations, including:

- Job Service North Dakota should seek funding for complete replacement of its unemployment insurance (UI) tax and benefits systems.
- The Legislative Assembly should consider a more restrictive definition of claimants exempt from work search activities.
- Job Service North Dakota should communicate to the "positive balance" employers the reasons for rate increases, the reasons for larger increases than in the past, and the positive

benefits that will result when the trust fund balance reaches its solvency target.

- Job Service North Dakota should consider acquiring a system to assist in managing overpayment and delinquent tax collections.

North Dakota Century Code Section 52-04-05 requires a minimum balance in the unemployment compensation fund, to be achieved over a seven-year period beginning January 1, 2000, sufficient to pay one year of unemployment benefits. The committee received testimony from a representative of Job Service North Dakota regarding rate limiters, which were enacted by the Legislative Assembly to gradually increase unemployment insurance rates for the years 2000, 2001, and 2002. The committee learned the removal of the rate limiters in 2003 will result in the average rate increases being greater than the previous three years and will allow Job Service North Dakota to more rapidly increase the trust fund balance in order to meet the December 31, 2006, targeted balance. Negative balance employers previously received incentives to bring their accounts to a positive balance; thus the removal of the rate limiters will more significantly affect positive balance employers. The committee accepted the performance audit report on Job Service North Dakota.

Veterans Home

Pursuant to Section 2 of 2001 Senate Bill No. 2007, a performance audit was conducted of the Veterans Home. The evaluation included studies of the management and administrative structure of the Veterans Home, whether the Veterans Home is efficiently and effectively using financial resources, and sufficiency in staffing and level of care. The evaluation was conducted by the State Auditor's office and Pathway Health Services, White Bear Lake, Minnesota. The resulting report included 46 recommendations, including:

- The Administrative Committee on Veterans Affairs should exercise more control and direction over the Veterans Home.
- The Veterans Home should develop a strategic plan with significant input from its stakeholders for measuring the productivity and operations of the Veterans Home.
- The Veterans Home should comply with NDCC Section 37-15-14, which requires the home to spend federal and special funds prior to general fund money.
- The Veterans Home should comply with NDCC Section 37-15-21 and ensure that gifts, donations, and bequests are used for the specific purposes for which they were given or donated.
- The Veterans Home should withhold appropriate payroll taxes for payment to employees and immediately notify the applicable federal and state entities of the lack of withholding appropriate payroll taxes from previous bonus payments to employees.
- The Veterans Home should establish a formal policy and procedure for admission, discharge,

and continuous stay criteria for the evaluation of appropriateness of residents moving into the basic care facility.

The committee received testimony from the State Auditor's office regarding the confidentiality of draft audit reports. The committee learned draft audit reports are exempt from open records laws; however, once the draft is released to an agency for comment, the exemption is lost. In order to exempt draft audit reports from the open records requirements, the Legislative Assembly would have to amend NDCC Section 54-10-26. The word "confidential" within Section 54-10-26 would prohibit discretionary issuance of the draft audit report by the agency or State Auditor's office.

The committee received testimony from a representative of the Administrative Committee on Veterans Affairs regarding the board's response to the Veterans Home performance audit. The committee learned each board member has been delegated responsibility for implementing specific audit recommendations within a specified period of time, ranging from less than 30 days, 31 to 90 days, 91 to 150 days, and 151 days and over. The committee also received testimony from representatives of the Veterans Home in support of the commandant and the Veterans Home.

The committee received information about the liability of the state and state employees for acts or omissions of the state employee, including the acts of a state employee which may be inappropriate. The committee received testimony from a representative of the State Department of Health regarding an incident in which the commandant became angry at State Department of Health employees and retrieved a toy gun from his desk, the department's response, and pursuing events.

Conclusion

The committee accepted the performance audit of the Veterans Home. The committee chairman asked the chairman of the Administrative Committee on Veterans Affairs to keep the Legislative Council staff and the committee informed regarding progress in implementing the performance audit recommendations.

The committee approved a motion to request the Attorney General's office to investigate, pursuant to NDCC Section 54-35-02.2, possible violations of state law as detailed in the June 2002 State Auditor's office performance audit report on the Veterans Home. The committee plans to meet during the 2003 Legislative Assembly to review the status of the implementation of the audit recommendation.

Recommendation

The Legislative Audit and Fiscal Review Committee recommends House Bill No. 1051 to provide that draft audit reports are confidential and exempt from open records requirements, and allow agencies to review the audit recommendations and suggest changes in language before finalization of the audit report.

Performance Audit Followup Reports

The committee accepted the followup reports presented to the committee on the status of recommendations included in the following performance audits:

- **State procurement practices (state agencies)** - The original performance audit report was presented to the committee in October 1998. The followup report indicated 11 of the original recommendations have been fully implemented, four of the original recommendations have been partially implemented, and one recommendation is no longer applicable.
- **State procurement practices (North Dakota University System)** - The original performance audit was presented to the committee in January 1998. The followup report indicated nine of the original audit recommendations have been fully implemented, six of the original recommendations have been partially implemented, two recommendations have not been implemented, and three recommendations are no longer applicable.
- **State personnel systems** - The original report was presented to the committee in October 1997. The followup report indicated 11 of the original recommendations have been fully implemented, 14 recommendations have been partially implemented, and five recommendations have not been implemented.

Procurement Practices - Additional Testimony

The committee received information on major NDCC provisions that require state agency purchases or expenditures to be subject to competitive bidding requirements; a summary of other statutory provisions, administrative rules, and agency policies relating to competitive bidding; and a summary of statutory provisions, rules, and policies relating to the inclusion of scholarships, endowments, and premiums in bid proposals, the appeal process for aggrieved vendors, and penalties.

A representative of the State Auditor's office presented information to the committee relating to the State Auditor's review of scholarships, endowments, and premiums that have been accepted by institutions of higher education as part of bid proposals. The committee learned, based on information provided by the institutions of higher education, of 12 instances of a vendor providing a scholarship, endowment, or premium to an institution of higher education as part of a bid proposal. The information indicated such instances occurred at six of the University System's 11 campuses.

Budget data prepared by the Office of Management and Budget is required, pursuant to NDCC Section 54-44.1-06, to include a list of every individual asset or service and every group of assets or services with a value of \$50,000 or more acquired through a capital lease or a debt financing arrangement. The list must include assets and services acquired during the current biennium and anticipated assets and services to be

acquired in the next biennium. The committee received a report from a representative of the Office of Management and Budget on general fund, federal funds, and special funds state agency expenditures for the 1999-2001 biennium for equipment lease payments.

Future Performance Audits

The committee learned the State Auditor's office will conduct a performance audit of the Department of Transportation's Motor Vehicle and Drivers License Divisions. Other possible performance audits include state agency-leased building space and the Department of Corrections and Rehabilitation Roughrider Industries.

COMPONENT UNITS OF STATE INSTITUTIONS

Background

The committee learned that after the completion of the North Dakota State University (NDSU) audit field audit work, the State Auditor's office requested additional information to define the relationship between the university and NDSU Research and Technology Park, Inc. During the process of acquiring the information, the State Auditor's office determined that guidelines, policies, or procedures were needed to clarify the financial reporting status of component units, such as NDSU Research and Technology Park, Inc.

Testimony

The committee received testimony from a representative of the North Dakota University System. The committee learned the State Board of Higher Education reviews and approves proposed agreements relating to the establishment of any component unit. The proposed agreements are also reviewed by the University System legal staff to ensure that the establishment of any entity will not result in any state liability.

The committee received testimony from representatives of the University of North Dakota (UND) and NDSU regarding the status of component units located on either university's property. The committee learned NDSU has received approval from the State Board of Higher Education to lease 40 acres of land to the Research and Technology Park, Inc., for a period of 70 years. Construction of buildings was financed with Municipal Industrial Development Act (MIDA) bonds issued by the City of Fargo. The repayment of the bonds is not the obligation of NDSU. The committee learned UND has entered into lease agreements to provide land for the construction of the new Engelstad Arena and for hotel development adjacent to the university. The representative of UND indicated the university is not at financial risk regarding the operational success of these entities.

Component Unit Guidelines

A representative of the State Auditor's office presented a report regarding component units of state institutions. The State Auditor's office and the University

System agreed to follow four guidelines to provide for the proper financial reporting of University System component units, summarized as follows:

1. The University System will evaluate any proposed component unit to ensure compliance with generally accepted accounting principles relating to reporting and disclosure. The University System will submit to the State Auditor's office the campus's decision regarding proper reporting and disclosure, substantiating documentation, a memorandum outlining the intended financial statement treatment of the component unit, articles of incorporation, corporate bylaws, Internal Revenue Service Form 990, and a listing of board members.
2. The State Auditor's office will review the information provided by the University System to determine an entity's proper reporting status. If necessary, the State Auditor will consult with the Attorney General's office. Representatives of the State Auditor's office and the University System will meet to discuss any differences in the determination of the proper reporting status.
3. The component unit, once established, may contract with a public accounting firm to perform an annual financial audit, a copy of which must be submitted to the State Auditor's office. If necessary to determine the relationship between the component unit and the university, the State Auditor's office will have access to the board minutes of the component unit as the minutes relate to business conducted between the component unit and the university. In addition the component unit will contract with an independent auditor to provide written confirmation that minutes provided to the State Auditor's office include all information required to be disclosed in the university audit report relating to transactions or relationships between the component unit and the college or university.
4. Information contained in the board minutes reviewed by the State Auditor's office will be subject to NDCC Section 54-10-22.1 regarding confidentiality. Any information in the board minutes which does not relate to transactions or relationships between the university and the component unit will not be included in the working papers of the State Auditor's office and therefore will not be available for public inspection.

Conclusion

The committee by motion supported the guidelines relating to the financial reporting status of component units of state institutions and encouraged the State Auditor's office and the University System to follow the guidelines.

COMMITTEE FOLLOWUP WITH AGENCIES THAT HAVE NOT COMPLIED WITH AUDIT RECOMMENDATIONS

Background

The committee reviewed procedures for enhancing its followup efforts relating to the implementation of audit recommendations. Previous actions taken by the committee to make sure state agencies address audit findings included requiring agency responses in the initial audit reports, inviting agencies to comment, and directing the State Auditor's office to do a six-month followup review.

Conclusion

The committee approved the sending of correspondence to each agency that has not complied with previous audit recommendations requesting the agency to appear before the Legislative Audit and Fiscal Review Committee to explain the reason for noncompliance with audit recommendations or steps taken to address recommendations. The Legislative Council staff is to issue the followup request on a case-by-case basis as directed by the committee.

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*. The *Comprehensive Annual Financial Report* contains the audited financial statements for state agencies and institutions. The committee received and reviewed the state's June 30, 2000 and 2001, *Comprehensive Annual Financial Report*.

OTHER REPORTS

Potato Council

The committee requested the Potato Council to present a report regarding compliance with audit recommendations. A representative of the Potato Council indicated all recommendations contained in the June 30, 2000 and 1999, audit report have been addressed. The committee accepted the Potato Council's June 30, 2000 and 1999, audit report.

The committee received a copy of the Red River Valley Potato Growers Association and Valley Potato Grower, Inc., consolidated financial statements for the years ended June 30, 2001 and 2000. The committee learned the Red River Valley Potato Growers Association is a nonprofit association organized under the laws of the state of North Dakota with authorization to conduct business in Minnesota (actually located in East Grand Forks, Minnesota). Valley Potato Grower, Inc., is a wholly owned for-profit subsidiary corporation of the Red River Valley Potato Growers Association. According to the audit report, the Red River Valley Potato Growers

Association received funding for promotional purposes of \$520,000 from the North Dakota Potato Council and \$75,000 from the Minnesota Potato Council for the year ended June 30, 2001, and \$550,000 from the North Dakota Potato Council and \$75,000 from the Minnesota Potato Council for the year ended June 30, 2000.

The committee received information from the State Auditor's office regarding the number of agricultural commodity organizations that send promotional "check-off" funds to national organizations.

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 committee. Pursuant to this section the audit report for Alchem, Ltd., for the years ended December 31, 2000 and 1999, and December 31, 2001 and 2000, was filed with the committee and distributed to committee members.

Department of Human Services Accounts Receivable Writeoffs

Pursuant to NDCC Sections 25-04-17 and 56-06.3-08, the Department of Human Services is required to present a report to the 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 2001 was received and accepted by the committee. Accounts receivable writeoffs as of June 30, 2001, were \$4,573,162 at the State Hospital, \$243,298 at the Developmental Center, and \$108,508 at the human service centers. The department's report for fiscal year 2002 was also received and accepted by the committee. Accounts receivable writeoffs as of June 30, 2002, were \$2,335,588 at the State Hospital and \$146,494 at the human service centers. The Developmental Center had no accounts receivable writeoffs for fiscal year 2002.

Information Technology Department

The committee received reports from a representative of the Information Technology Department on the development of performance measures pursuant to Section 9 of 2001 Senate Bill No. 2043 and the status of information technology projects, services, plans, and benefits pursuant to NDCC Section 54-59-19.

Pension Funds

The committee received information from representatives of the Retirement and Investment Office and the Public Employees Retirement System regarding the status of pension fund assets. The Teachers' Fund for Retirement experienced a negative market return of 8.6 percent for the year ending June 30, 2002, while the Public Employees Retirement System had a negative market return of 6.94 percent for the same year. Both funds use an 8 percent annual investment return in their

actuarial assumptions that evaluate the long-term status of the funds.

Driver's License System Information Technology Audit

The committee received and approved the followup report on the driver's license system information technology audit. The committee learned that nine prior audit recommendations have been fully implemented and one prior audit recommendation has been partially implemented.

**AUDIT REPORTS ACCEPTED BY THE LEGISLATIVE AUDIT AND FISCAL
REVIEW COMMITTEE DURING THE 2001-02 INTERIM**

Agency	Audit Report Date	Meeting Date Accepted
Abstractors Board of Examiners	June 30, 2001 and 2000	June 4-5, 2002
Addition Counseling Examiners, Board of	June 30, 2001 and 2000	June 4-5, 2002
Adjutant General	June 30, 2000 and 1999	August 3, 2001
Administrative Hearings, Office of	June 30, 2001 and 2000	June 4-5, 2002
Aeronautics Commission	June 30, 2001 and 2000	October 2, 2002
Ag PACE fund	June 30, 2000 and 1999	August 3, 2001
Ag PACE fund	June 30, 2001 and 2000	November 26, 2001
Agriculture, Department of	June 30, 2001 and 2000	October 2, 2002
Architecture, Board of	June 30, 2000 and 1999	June 4-5, 2002
Architecture, Board of	June 30, 1999 and 1998	August 3, 2001
Athletic Training Board	June 30, 2000 and 1999	June 4-5, 2002
Attorney General	June 30, 2000	August 3, 2001
Bank of North Dakota	December 31, 2000 and 1999	August 3, 2001
Bank of North Dakota	December 31, 2001 and 2000	October 2, 2002
Beef Commission	June 30, 2001	June 4-5, 2002
Beef Commission	June 30, 2002	October 2, 2002
Beginning farmer revolving loan fund	December 31, 2001 and 2000	October 2, 2002
Beginning farmer revolving loan fund	December 31, 2000 and 1999	August 3, 2001
Bismarck State College	June 30, 2001 and 2000	June 4-5, 2002
Building Authority	June 30, 2000 and 1999	June 4-5, 2002
Building Authority	June 30, 2001 and 2000	November 26, 2001
Children's Services Coordinating Committee	June 30, 2001 and 2000	June 4-5, 2002
Chiropractic Examiners, Board of	December 31, 2000	August 3, 2001
Clinical Laboratory Practice, Board of	June 30, 2001 and 2000	June 4-5, 2002
Community water facility loan fund	December 31, 2000 and 1999	August 3, 2001
Community water facility loan fund	December 31, 2001 and 2000	August 2, 2002
Corrections and Rehabilitation, Department of	June 30, 2001 and 2000	June 4-5, 2002
Cosmetology, Board of	June 30, 2001	October 2, 2002
Cosmetology, Board of	June 30, 2002	August 3, 2001
Council on the Arts	June 30, 2001 and 2000	October 2, 2002
Counselor Examiners, Board of	June 30, 2000 and 1999	August 3, 2001
Dental Examiners, Board of	June 30, 2001 and 2000	June 4-5, 2002
Development Fund, Inc.	June 30, 2000 and 1999	August 3, 2001
Development Fund, Inc.	June 30, 2001 and 2000	November 26, 2001
Developmentally disabled facility loan program	December 31, 2000 and 1999	August 3, 2001
Developmentally disabled facility loan program	December 31, 2001 and 2000	October 2, 2002
Dickinson State University	June 30, 2001 and 2000	June 4-5, 2002
Dietetic Practice, Board of	September 30, 2001 and 2000	October 2, 2002
Economic Development and Finance, Department of	June 30, 2001 and 2000	October 2, 2002
Education Standards and Practices Board	June 30, 2001 and 2000	October 2, 2002
Electrical Board	June 30, 2001 and 2000	June 4-5, 2002
Emergency Management, Division of	June 30, 2000	August 3, 2001
Firemen's Association	April 30, 2001	June 4-5, 2002
Funeral Service, Board of	June 30, 2000 and 1999	August 3, 2001
Game and Fish Department	June 30, 2000	August 3, 2001
Governor's office	June 30, 2001 and 2000	October 2, 2002
Guaranteed student loan program	September 30, 2001 and 2000	June 4-5, 2002
Guaranteed student loan program	September 30, 2000 and 1999	June 4-5, 2003
Health, State Department of	June 30, 2001 and 2000	October 2, 2002
Hearing Instrument Dispensers, Board of Examiners for	June 30, 2001 and 2000	October 2, 2002
Highway Patrol	June 30, 2000	August 3, 2001
Housing Finance Agency	June 30, 2001 and 2000	June 4-5, 2002
Housing Finance Agency	June 30, 2000 and 1999	June 4-5, 2002
Human Services, Department of	June 30, 2001 and 2000	October 2, 2002
Indian Affairs Commission	June 30, 2000 and 1999	August 3, 2001
Industrial Commission	June 30, 2001 and 2000	June 4-5, 2002
Information Technology Department	June 30, 2000	August 3, 2001
Information Technology Department (general controls audit)	June 30, 2001	June 4-5, 2002
Information technology systems risk assessment	May 2002	June 4-5, 2002
Insurance Commissioner	June 30, 2001 and 2000	June 4-5, 2002
Job Service North Dakota	June 30, 2001 and 2000	June 4-5, 2002
Job Service North Dakota	June 30, 2000 and 1999	June 4-5, 2002
Job Service North Dakota (performance audit)	September 2002	October 2, 2002
Judicial branch	June 30, 2001 and 2000	June 4-5, 2002
Labor Commissioner	June 30, 2001 and 2000	October 2, 2002
Lake Region State College	June 30, 2001 and 2000	June 4-5, 2002
Law Examiners, Board of	June 30, 2001 and 2000	October 2, 2002
Legislative Assembly	June 30, 2001 and 2000	November 26, 2001
Legislative Council	June 30, 2001 and 2000	November 26, 2001
Management and Budget, Office of	June 30, 2001 and 2000	October 2, 2002

Agency	Audit Report Date	Meeting Date Accepted
Massage, Board of	June 30, 1999 and 1998	August 3, 2001
Mayville State University	June 30, 2001 and 2000	June 4-5, 2002
Medical Examiners, Board of	December 31, 2000 and 1999	October 2, 2002
Mill and Elevator Association	June 30, 2001 and 2000	November 26, 2001
Mill and Elevator Association	June 30, 2000 and 1999	August 3, 2001
Minot State University	June 30, 2001 and 2000	June 4-5, 2002
Minot State University-Bottineau	June 30, 2001 and 2000	June 4-5, 2002
Municipal Bond Bank	December 31, 2000 and 1999	August 3, 2001
Municipal Bond Bank	December 31, 2001	June 4-5, 2002
North Dakota State University	June 30, 2001 and 2000	June 4-5, 2002
North Dakota University System	June 30, 2001	June 4-5, 2002
Nursing Home Administrators, Board of Examiners for	June 30, 2000 and 1999	August 3, 2001
Nursing, Board of	June 30, 2000 and 1999	November 26, 2001
Occupational Therapy Practice, Board of	June 30, 2001 and 2000	June 4-5, 2002
Optometry, Board of	June 30, 2000 and 1999	August 3, 2001
PACE fund	June 30, 2001 and 2000	November 26, 2001
PACE fund	June 30, 2000 and 1999	August 3, 2001
Parks and Recreation Department	June 30, 2001 and 2000	October 2, 2002
Pharmacy, Board of	June 30, 2000 and 1999	August 3, 2001
Pharmacy, Board of	June 30, 2001 and 2000	June 4-5, 2002
Physical Therapists, Examining Committee for	June 30, 2000 and 1999	June 4-5, 2002
Plumbing, Board of	June 30, 2001 and 2000	June 4-5, 2002
Podiatry Examiners, Board of	December 31, 2001, 2000, and 1999	October 2, 2002
Potato Council	June 30, 2000 and 1999	June 4-5, 2002
Private Investigative and Security Board	June 30, 2000 and 1999	August 3, 2001
Professional Engineers and Land Surveyors, Board of Registration for	June 30, 2000 and 1999	August 3, 2001
Professional Soil Classifiers, Board of Registration for	June 30, 2001 and 2000	October 2, 2002
Psychologist Examiners, Board of	June 30, 2001 and 2000	June 4-5, 2002
Public Accountancy, Board of	June 30, 2001	June 4-5, 2002
Public Accountancy, Board of	June 30, 2002	October 2, 2002
Public Employees Retirement System	June 30, 2000 and 1999	June 4-5, 2002
Public Employees Retirement System	June 30, 2001 and 2000	June 4-5, 2002
Public Instruction, Department of	June 30, 2001 and 2000	October 2, 2002
Public Service Commission	June 30, 2001 and 2000	June 4-5, 2002
Real Estate Commission	June 30, 2000 and 1999	August 3, 2001
Real Estate Commission	June 30, 2001 and 2000	June 4-5, 2002
Respiratory Care, Board of	June 30, 2001 and 2000	June 4-5, 2002
Retirement and Investment Office	June 30, 2001 and 2000	June 4-5, 2002
Retirement and Investment Office	June 30, 2000 and 1999	June 4-5, 2002
Seed Department	June 30, 2000 and 1999	August 3, 2001
Service payments for elderly and disabled (SPED) (performance audit)	October 2001	November 26, 2001
Sheep farm, NDSU Main Research Station	April 2002	June 4-5, 2002
Social Work Examiners, Board of	June 30, 2001 and 2000	June 4-5, 2002
Soybean Council	June 30, 2002 and 2001	October 2, 2002
Soybean Council	June 30, 2001 and 2000	June 4-5, 2002
State Auditor	June 30, 2001 and 2000	November 26, 2001
State College of Science	June 30, 2001 and 2000	June 4-5, 2002
State Fair Association	September 30, 2000 and 1999	June 4-5, 2002
State Fair Association	September 30, 2001 and 2000	June 4-5, 2002
State Treasurer	June 30, 2001 and 2000	June 4-5, 2002
Stockmen's Association	December 31, 2001	June 4-5, 2002
Stockmen's Association	December 31, 2000	August 3, 2001
Student loan trust	September 30, 2000 and 1999	August 3, 2001
Student loan trust	June 30, 2001 and 2000	June 4-5, 2002
Tax Commissioner	June 30, 2001 and 2000	June 4-5, 2002
Transportation, Department of	June 30, 2001 and 2000	June 4-5, 2002
University and School Lands, Board of	June 30, 2000 and 1999	June 4-5, 2002
University and School Lands, Board of	June 30, 2001 and 2000	June 4-5, 2002
University of North Dakota	June 30, 2001 and 2000	June 4-5, 2002
University System office	June 30, 2000	August 3, 2001
Valley City State University	June 30, 2001 and 2000	June 4-5, 2002
Veterans Home	June 30, 2001 and 2000	June 4-5, 2002
Veterans Home (performance audit)	June 2002	October 2, 2002
Veterinary Medical Examiners, Board of	June 30, 2000 and 1999	August 3, 2001
VISION system (IT audit)	July 1, 1999, through December 31, 2000	August 3, 2001
Vocational and Technical Education, Board for	June 30, 2001 and 2000	June 4-5, 2002
Water Commission	June 30, 2001 and 2000	October 2, 2002
Water Well Contractors, Board of	June 30, 2000 and 1999	August 3, 2001
Williston State College	June 30, 2001 and 2000	June 4-5, 2002
Workers Compensation Bureau	June 30, 2001 and 2000	June 4-5, 2002
Workers Compensation Bureau	June 30, 2000 and 1999	June 4-5, 2002
Workers Compensation Bureau (performance audit)	August 2002	October 2, 2002

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 special legislative session and the 2003 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 under Section 54-03-26 to determine the computer usage fee for legislators; (2) the power and duty 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; (4) the authority under Section 46-02-04 to determine the contents of contracts for the printing of legislative bills, resolutions, and journals; and (5) the responsibility under Section 54-60-03 to determine which standing committees will receive a report from the Commissioner of Commerce. The Legislative Council assigned to the committee the responsibility to determine when agricultural commodity promotion groups must report to the standing Agriculture Committees under Section 4-24-10 and which committees of the 58th Legislative Assembly are to receive a report from the Labor Commissioner under 2001 Session Laws, Chapter 145, Section 15.

Committee members were Senators Bob Stenehjelm (Chairman), Bill Bowman, Randel Christmann, Joel C. Heitkamp, and Aaron Krauter and Representatives Wesley R. Belter, LeRoy G. Bernstein, Merle Boucher, Pam Guleson, David Monson, and Mike Timm.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2002. The Council accepted the report for submission to the 58th Legislative Assembly.

LEGISLATIVE RULES

The committee continued its tradition of reviewing and updating legislative rules. After the 2001 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.

Joint Constitutional Revision Committee

During its review of responses to the legislative process questionnaire, the committee discussed whether to reestablish the Joint Constitutional Revision Committee. This committee was created in 1977 as recommended by the Legislative Procedure and Arrangements

Committee as a means to ensure that constitutional revision measures recommended by the Legislative Assembly were coordinated and did not conflict with one another. Because of conflicts during the 1995 legislative session when other committees met when the Joint Constitutional Revision Committee met, the Legislative Management Committee recommended repeal of the committee in 1996. Since that time, 14 proposed constitutional amendments were considered during the 1997 legislative session, 18 during the 1999 legislative session, and 7 during the 2001 legislative session. Those proposed constitutional amendments were referred to various standing committees for hearings and recommendations.

The committee recommends creation of Joint Rule 303 to reestablish the Joint Constitutional Revision Committee. The committee would consist of 10 members, five from each house. The committee would meet on Wednesday of each week beginning at 3:00 p.m. in the Prairie Room and would receive all resolutions proposing amendments to the Constitution of North Dakota. The committee also recommends the necessary amendments to Senate and House Rules 502 and 503 to allow legislators who serve on two standing committees to be eligible for the Joint Constitutional Revision Committee and to prohibit committees that have Joint Constitutional Revision Committee members from meeting when that committee meets. With this committee reestablished, one committee would coordinate which election measures should be placed on the ballot and the order of placement on the ballot.

Printed Bills and Resolutions

The committee reviewed a suggestion from personnel employed in the bill and journal room during the 2001 legislative session with respect to the number of bills printed. Under Joint Rule 603(1) and (2) and the contract for printing bills, resolutions, and journals, 500 copies of introduced bills and resolutions and 100 copies of engrossed bills and resolutions are printed. The suggestion was to change these numbers to 300 to 350 and 150 to 200, respectively, because of the excess numbers remaining after the legislative session. The reasons for the increase in undistributed bills and resolutions appear to be use of personal computers by legislators, with the corresponding reduction in bill racks in the chambers, and availability of the text of bills and resolutions on the Internet.

The committee recommends amendment of Joint Rule 603(1) and (2) to provide for the printing of 350 copies of introduced bills and resolutions and 200 copies of engrossed bills and resolutions. A corresponding change was made in the contract for printing bills, resolutions, and journals which was awarded by the committee in October 2002.

Executive Agency and Supreme Court Bills

The 57th Legislative Assembly amended Joint Rule 208 to authorize executive agencies and the Supreme Court to file with the Legislative Council those bills they wish to have introduced no later than the close of business on the day after adjournment of the organizational session. The former deadline was December 10, which caused questions about the actual deadline when that date fell on a weekend. The committee discovered that Senate and House Rules 402(2) still refer to the December 10 deadline.

The committee recommends amendment of Senate and House Rules 402(2) to require executive agencies and the Supreme Court to file bills no later than the close of business on the day after adjournment of the organizational session. The amendment completes the change initiated before the 2001 legislative session by making consistent the references in the Senate, House, and Joint Rules.

The committee received a request from the Office of Management and Budget relating to the preparation of appropriation bills. The Office of Management and Budget reported that the office could not meet the statutory deadline provided by NDCC Sections 54-44.1-06 and 55-44.1-07 for the presentation of the appropriation bills at the organizational session. 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 12, 2002.

Legislative Rules Book

The committee authorized a reprint of the legislative rules book to 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 a proposed amendment of Senate and House Rules 402 to designate the fifth legislative day as the deadline for introducing a bill mandating health insurance coverage of services or payment for specified providers of services. This proposal is discussed in detail under **MISCELLANEOUS MATTERS, Health Insurance Mandates Procedure.**

The committee reviewed NDCC Section 23-12-10, which prohibits smoking outside designated smoking areas in places of public assembly and allows public officials having general supervisory responsibility for government buildings to designate smoking areas. Until 1993, Joint Rule 804 designated the legislative study room on the first floor of the State Capitol as a smoking area during a legislative session for members of the Legislative Assembly, guests specifically invited by members of the Legislative Assembly, and employees of the legislative branch. In 1993 each house adopted a different version of Joint Rule 804--the Senate allowed "employees of the legislative branch" and the House

allowed "state employees" to use the smoking area. Thus, no joint rule is in effect which designates a smoking area. The committee makes no recommendation with respect to reestablishing Joint Rule 804.

Recommended Bill -

Receipt of Bills by the Governor

The committee discussed news stories concerning the Governor of Minnesota being "unavailable" to accept a bill enacted by the Minnesota Legislature and whether such an issue could arise in North Dakota. No constitutional or statutory provision requires the Governor to receive bills presented by either house of the Legislative Assembly. Although no judicial opinion in North Dakota directly addresses the issue of when the Governor must receive a bill presented by the Legislative Assembly, court decisions in other states support the position that regular presentment to the Governor or Governor's staff constitutes delivery.

The committee recommends Senate Bill No. 2050 to address the lack of procedures with respect to accepting delivery of bills passed by the Legislative Assembly. The bill requires the Governor to accept delivery of bills passed by the Legislative Assembly and presented to the Governor during regular business hours. Provision is made authorizing coordination with the presiding officer of the Senate or the House of Representatives with respect to delivery of bills outside normal business hours or during times the Governor anticipates being out of the office for more than three legislative days. This coordination recognizes current practice. The period of three legislative days tracks the period of time during the legislative session when the Governor must act on a bill after its delivery, as provided by Article V, Section 9, of the Constitution of North Dakota.

LEGISLATIVE INFORMATION SERVICES

Notebook Computers for Legislators

After the 1995 legislative session, 60 IBM ThinkPad 755CD notebook-style personal computers were purchased for distribution to legislators, and during the 1995-96 interim 15 IBM ThinkPad 760ED notebook-style personal computers were leased for distribution to legislators. These numbers were viewed as the upper limit for which support and assistance could be provided through the 1997 legislative session. ThinkPads with built-in CD-ROM drives were chosen for legislators due to their features, past experience with the reliability of IBM hardware, and the ability to obtain local support and maintenance on short notice.

After the 1997 legislative session, 60 Gateway Solo 9100 notebook-style computers were purchased for distribution to legislators. During the 1997-98 interim, the IBM ThinkPads were replaced by 87 Gateway Solo 2500 notebook-style computers. The decision to replace the IBM ThinkPads was made as part of the Legislative Assembly's information technology strategic plan to provide every legislator with a computer that would be able to take full advantage of the 1997-98 enhancements to the Legislator's Automated Work Station

(LAWS) system, e.g., split-screen display of amendments and text of bills and planned software upgrades for the next four years. In addition, newer computers would allow more efficiencies due to Pentium processor speed and greater disk capacity. The computers were either Pentium 166 MMXs or Pentium II 233s. Each computer had 48 megabytes (MB) of RAM and the hard drive was either two or four gigabytes (GB). The display was 13.3 inches and the operating system was Windows 95.

The committee reviewed a four-year replacement schedule for notebook-style computers for legislators. Some of the computers used by legislators had been in service four to five years. Warranties on 60 computers expired before the 2001 legislative session, and the warranties on 87 computers expired June 19, 2001. Warranty service was important with respect to the Gateway computers--the computers were experiencing various hardware problems such as hard drive and battery failures, an inventory of replacement parts was becoming difficult to maintain, and a timelag of six weeks to obtain parts was becoming common. A number of computers were operable only because the Legislative Council staff had scavenged other computers for parts. Newer software was not compatible with the Windows 95 operating system, which was no longer supported by Microsoft. For most legislative purposes, the limits on the Gateway computers had been reached as far as further software development and upgrades.

The committee reviewed requirements for the replacement of legislators' computers. Basically, 256-MB RAM is necessary for the LAWS system, Lotus Notes, and Internet Explorer to be open simultaneously and operate at an adequate speed. A 15-inch screen would accommodate future development in the LAWS system, particularly with respect to easier viewing of the text of measures. A 20-GB hard drive is necessary to accommodate the amount of legislative software that needs to be loaded on the computers. The Windows 2000 operating system is recommended for use with Corridor application, which provides access to LAWS via the web. A Pentium III 900 megahertz processor would provide adequate speed for projected future development.

The committee reviewed information on five notebook computers--the IBM ThinkPad A22m, Dell Inspiron 2500, Gateway Solo 9500, Compaq Armada E500, and HP OmniBook XE3. After reviewing the specifications for each computer, committee members gave each computer a hands-on test. The committee authorized the purchase of 150 IBM ThinkPad A22m notebook-style computers with the standard warranty.

Primary reasons for selecting this computer were the inclusion of a DVD drive, which may be useful in the development of future legislative applications; a bright display screen; quiet fan operation, the better "feel" of the keyboard and appearance of the keyboard display; the location of the network connection on the back versus the side; and the Legislative Council's repair experience with its notebook-style computers. One

hundred fifty computers were acquired so each legislator is able to receive a computer and identical computers are available for testing and providing help service when legislators have computer-related problems.

The Gateway computers not needed in other areas of the legislative branch were transferred to the Surplus Property Division for transfer to state agencies, political subdivisions, and nonprofit organizations eligible to receive federal surplus property under NDCC Section 54-44-04.6, relating to state surplus property.

E-Mail File Quotas

In May 2002 the Information Technology Department established an e-mail file quota of 50 MB for each state official and employee. The quota applies to a legislator's e-mail with respect to inbox, drafts, e-mail sent, attachments, and graphics, and also includes the legislator's calendar of meetings, appointments, events, anniversaries, reminders, and to do lists. For illustrative purposes, 50 MB is equivalent to 11,370 sheets of paper with two single-spaced paragraphs filling approximately one-half the page. As of October 4, 2002, 21 legislators exceeded the 50-MB quota.

The committee received information indicating quotas were established to address a number of concerns, including security, system performance, manageability, system integrity, disaster recovery, and cost. The quotas provide for a staged warning system--at 40 MB a user receives a message that quota capacity is about to be reached and at 50 MB a user receives a message that the quota has been exceeded. A user with over 50 MB cannot send, reply to, or forward mail and a user over 150 MB will not receive mail.

Although the committee discussed whether to add 50 MB to the quota at a cost of \$3 per month per legislator, discussion centered on the purpose of file quotas and the need for proper e-mail management. The committee was concerned, however, over whether the 50-MB quota would be sufficient during a legislative session, when e-mail volume to legislators substantially increases.

The committee recommends that the 50-MB e-mail file quota applicable to state officers and employees be applicable to legislators. The committee also recommends that the Legislative Council staff seek arrangements with the Information Technology Department for additional megabytes or an unlimited quota for the period beginning December before a legislative session and ending May 31 after the legislative session has adjourned.

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.

When the 50-MB e-mail file quota was established in May 2002, an issue was raised whether payment of the \$10 per month entitled a legislator to unlimited e-mail files. During committee discussion of e-mail file quotas, it was pointed out that the personal use option was instituted to encourage legislators to use their computers but not to the point of extensive personal or business use.

The committee recommends that the fee for the personal use option be maintained at \$10 per month. The committee makes no recommendation concerning a change in the policy on use of personal computers.

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. Representatives of the media as determined under Joint Rule 802 and 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.

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. Eight entities paid a \$305 subscription fee (two paid \$415 to receive the reports by mail) to receive these reports during the 2001 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 2003 bill status report and pay a \$325 subscription fee, \$435 if mailed. The committee 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.

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. The requester was to pay the postage if the request was for a large number or all of the bills and resolutions introduced. 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 2001 legislative session, 31 entities paid to pick up a set of bills and resolutions from the bill and journal room and one paid to receive the set by mail; 44 entities paid to pick up a set of bills and resolutions as introduced and as engrossed and two paid to receive a set by mail; 35 entities paid to pick up a set of journals and one paid to receive a set by mail; and 12 entities paid to receive the journal index.

The committee established the following fees with respect to these documents during the 2003 legislative session--\$120 for a set of bills and resolutions as introduced and printed or reprinted, \$230 if mailed; \$280 for a set of bills and resolutions as introduced and printed or reprinted, including a set of all engrossed and reengrossed bills and resolutions, \$455 if mailed; and \$70 for a set of daily journals of the Senate and House, \$170 if mailed. The fee for the journals includes final covers after the legislative session adjourns. The committee established a subscription fee of \$30 to receive the index to the Senate and House journals for the 2003 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 mailing the daily calendars or committee hearing schedules, the policy

followed during the 2001 legislative session should continue, and a fee should be imposed to cover the cost of mailing. During the 2001 legislative session, one entity paid to receive the hearing schedules by mail and no entity paid to receive the calendars by mail. The committee established a subscription fee of \$30 for mailing a set of the weekly hearing schedules for Senate and House committees and a subscription fee of \$55 for mailing a set of daily calendars of the Senate and House.

Legislative Document Distribution Program

Starting with 30 participating libraries during the 1983 legislative session, the Legislative Assembly provided bills, resolutions, journals, and bill status reports to academic, special, and public libraries throughout the state. Under the program, copies of introduced bills and resolutions, daily journals, and bill status reports were delivered to the libraries by United Parcel Service. The program peaked in 1989 when 51 libraries participated. As the information is now free of charge on the Internet, only three libraries participated in the program in 2001.

The committee approved elimination of the program beginning with the 58th Legislative Assembly.

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 November and December 2001 and April 2002 and by the North Dakota High School Activities Association State Student Congress in November 2001, November 2002, and October and November 2003; use of the

Senate chamber by the Supreme Court for the admission to the bar ceremony in October 2001 and October 2002; and use of the House chamber by the North Dakota 4-H Centennial for a 4-H centennial conversation in January 2002, by the Hugh O'Brian Youth Foundation in June 2002, and by the Silver-Haired Education Association in July and August 2002.

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.

The Legislative Council adopted the policy governing approval of use of committee rooms in 1998 and revised the policy in 2000. The policy is similar to that governing use of the chambers. The policy also applies to proper use of the press studio on the ground floor of the legislative wing whether during the session or during the interim--the press studio 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. The committee makes no recommendation with respect to revisions to the policy.

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 not be continued for the 58th Legislative Assembly. A consolidated contract was first entered for the 55th Legislative Assembly (1997) under the assumption that economies would be obtained as the result of a single contractor printing bills, resolutions, and journals and operating the bill and journal room. The committee determined that operating the bill and journal room should be separated from printing responsibilities to give the opportunity for entities to bid for printing without having to operate a distribution center and for entities to bid without having to provide printing capabilities. 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 58th Legislative Assembly, the committee reduced the number of introduced bills and resolutions printed from 500 to 350, increased the number of engrossed bills and resolutions printed from 100 to 200, and eliminated the requirement of a \$75,000 performance bond or a \$15,000 escrow account. The changes in the number of printed bills and resolutions were suggested by bill and journal room personnel. The elimination of the performance bond or escrow account requirement was suggested by Central Services Division personnel. Reasons for elimination of the surety requirement were that no performance bond has been forfeited in over 30 years, only one other state agency has a similar requirement, and payment for printing is after the fact so any nonperformance would not result in a loss of money.

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.

LEGISLATIVE WING RENOVATION PROJECTS

Legislative Council Space

The third floor of the Legislative Council area was the top floor of what formerly was the Supreme Court library. The space provided for only one office and an open area and storage room which housed four information technology employees and two information technology consultants as well as network servers and personal

computers in the process of being maintained or salvaged. The committee approved the use of legislative carryover funds to renovate the area to provide separate offices, individually controlled air-conditioning and heating, better lighting, more network connections and wiring, and more efficient storage space.

Public Notebook Access in State Capitol

The committee reviewed a request that the Legislative Assembly provide an area with telephone hookups and tables so that lobbyists and members of the public could connect their notebook computers to their Internet service providers or private networks. The committee reviewed alternate locations in which to provide a small workspace and telephone hookups. Each hookup would require payment of a telephone access charge by the legislative branch. Areas under consideration included the existing telephone connections and carrels in the first floor legislative study (to the west of the Senate chamber), the west end of Memorial Hall just to the east of the windows, either side of Memorial Hall, and the east portion of the public coatroom on the ground floor to the south of the bill and journal room.

The committee discovered that the Information Technology Department has installed wireless access points throughout the Capitol. Any person having a notebook computer with the appropriate wireless card can obtain a network name and a password from the department, access the wireless network, and connect with a private Internet service provider or network from anywhere in the Capitol.

The committee recommends that anyone who desires access to a private service provider or network for a notebook computer install a wireless card and make network access arrangements with the Information Technology Department. This service is available to anyone, and the Legislative Assembly would not incur additional telephone access charges for providing telephone connections.

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 may have different policies regarding whether to take advantage of 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.

Legislators' Supplies

Stationery

The committee discussed the effect e-mail has had on reducing the volume of letter correspondence by legislators. As a means to reduce costs, the committee requested bid prices for providing 250 sheets of stationery and 250 envelopes to legislators rather than 500 sheets and envelopes. The committee approved the policy that each legislator be given the option of receiving 500 sheets (one ream) of regular stationery and 500 envelopes or 250 sheets and 250 envelopes or receiving no stationery or 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 2001 legislative session, for stationery due to its design for laser printers.

Carrying Cases

The committee approved continuation of the policy, first established in 1984, of providing a carrying case to each legislator on request. The committee selected a canvas-type carrying case instead of the leather-type carrying case that has been provided in the past.

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 7:00 a.m. or after 5:30 p.m. or on weekends requires use of a security key card to present near a reader that unlocks the door and records use of the key. Each card is coded, and a computerized record is kept of use. During the 2001 session, every legislator received a security key card for access to the Capitol. The leaders' cards were effective throughout the year and the cards of other members were effective during the legislative session.

During the interim, many legislators conducted business in the Capitol and needed to "card out" after 5:30 p.m. As a result, all legislators' cards were made effective throughout the year.

Legislators' Expense Reimbursement Policies

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. Legislators receive up to \$650 per month as reimbursement for lodging. The policy followed for the 57th 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 58th Legislative Assembly be the same as that followed for the 57th Legislative Assembly.

The committee discussed reimbursement of lodging expenses incurred by legislators in light of a policy adopted by the Office of Management and Budget which provides that receipts for lodging must be from bona fide lodging establishments, which do not include relatives. This policy affects two areas for which legislators are reimbursed--during a legislative session many legislators rent private homes in the Bismarck-Mandan area and during the interim a few legislators are reimbursed for lodging receipts submitted by individuals or relatives with whom the legislators stay during committee meetings.

The committee recommends that traditional policies for reimbursement with respect to lodging receipts and travel for legislators be continued.

Legislators' Computer Training

The committee approved the agenda for providing computer training to legislators before the convening of the 58th Legislative Assembly and authorized the Legislative Council staff to conduct training sessions for legislators. The training focuses on two areas--general computer training and LAWS system 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 is on Thursday and Friday, December 5-6, the days immediately following the organizational session.

During the organizational session, returning legislators can take 90-minute, concurrent miniclasses on Notes e-mail, Internet, and Word Pro Millennium, similar to the miniclasses provided during the 2000 organizational session. The miniclasses are scheduled for Monday morning, Tuesday morning and afternoon, and Wednesday afternoon.

Legislators can receive LAWS system training in three-hour blocks, either in the morning or afternoon, on Friday, January 3, or Monday, January 6, in the Brynhild Haugland Room. During legislative sessions, legislators can request individualized training at their desks in the chambers and can receive individual on-line learning through Internet classes.

Legislators' Photographs

The committee approved the invitation to bid for photography services to the 58th Legislative Assembly. With respect to the House, the proposal provided for two color pictures of two poses of 97 individuals; color touchup of the final pose; one composite color picture 50 by 60 inches, proofed, framed, and ready to hang; and 97 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 51 individuals;

color touchup of the final pose; one composite color picture 30 by 40 inches, proofed, framed, and ready to hang; and 51 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 2002, and the photographs of the six elected legislative officers are to be taken during the first week of the regular session. For the large composite pictures, the Legislative Council provides the frames from previous Legislative Assembly pictures. The large composites of the previous Legislative Assembly are transferred to the State Historical Society and are placed in the state archives. The photographer is to provide the digital image of the pose selected by the photographer to the Legislative Council by Friday, December 20, 2002, for use in updating the legislative branch web site, and provide the digital image of the final pose to the Legislative Council by Friday, February 7, 2003.

Two firms submitted bids ranging from \$3,700 to \$4,495. The committee awarded the contract to the lowest bidder--Anderson Photography, Crosby--the firm that was also the photographer for the 54th through 57th Legislative Assemblies.

Journal Distribution Policy

The committee recommends a policy that a legislator may have daily journals sent, without charge, to any person upon 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 2001 legislative session, Community Access Television provided coverage of the Senate and House on alternating weeks. In addition, Community Access Television provided the video signal to the North Dakota Interactive Video Network and the Information Technology Department. These entities combined the video signal from Community Access Television with the House and Senate audio feed and provided live video/audio streaming of the floor sessions on the Interactive Video Network and the Internet.

During committee discussion of television coverage of the Legislative Assembly, Community Access Television urged consideration of installation of small cameras operated remotely by a single control room operator for broadcasting the floor sessions as well as other functions in the legislative wing.

The committee authorized Community Access Television to continue to provide coverage of the 58th Legislative Assembly under an arrangement similar to that provided during the 2001 legislative session and authorized web streaming through technology provided by the North Dakota Interactive Video Network and the Information Technology Department, at the expense of those parties.

Incoming WATS Line Service

Beginning with the 1985 legislative session, 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.

Even if all telephone lines are in use, callers do not receive a "busy" signal. If all lines are in use 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 is available 24 hours a day, 7 days a week during regular legislative sessions. During the 2001 legislative session, 1,375 voice mail messages were left for legislators.

The telephone service also includes interactive voice response applications. One application provides bill status and committee hearing information after the caller keys the bill number. Another application separates 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 asks for each item individually, with time to respond before the next request.

The committee recommends continuation of the telephone message service on the same basis for the 58th Legislative Assembly as provided for the

57th Legislative Assembly. The WATS number will continue to be 1-888-ND-LEGIS (1-888-635-3447).

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 approved the agenda for orientation and training of legislative session employees immediately before the convening of the 58th Legislative Assembly and authorized the Legislative Council staff to conduct training sessions for various session employees.

The training is similar to that provided before the 2001 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 journal 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 attendant to two weeks for a new journal reporter.

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 25, 2002, to January 2, 2003, depending on the position.

Session Employee Positions

The committee reviewed the number of employee positions during the 1995, 1997, 1999, and 2001 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 the same number of positions in the Senate and House during the 2003 legislative session as authorized or filled during the 2001 legislative session. The plan continued the rotation of four positions between the Senate and House--payroll clerk, parking lot attendant, supply room coordinator, and information desk attendant. For the Senate, the plan provided for the payroll clerk (who is a Senate rather than House employee during the 2003 legislative session), the parking lot attendant (who is a Senate rather than House employee during the 2003 legislative session), no supply room coordinator (who is a House rather than Senate employee during the 2003 legislative session), and no information desk attendant (who is a House rather than Senate employee during the 2003 legislative session). For the House, the plan provided for no payroll clerk, no parking lot attendant, the supply room coordinator, and the information desk attendant. In

addition, the plan continued the additional legislative assistant (page and bill book clerk) position filled by the House in 2001. In total, the plan provided for 34 Senate employee positions and 40 House employee positions.

The committee recommends that the Employment Committees provide for 34 Senate employee positions and 40 House employee positions.

The committee also recommends that during the organizational session each majority leader and minority leader be authorized to employ an administrative assistant. This is in recognition of the need for administrative assistance in these offices during the organizational session.

Because of enhancements to the calendar and journal system before the 2001 legislative session, the bill status system was completely automated, and thus the bill clerk would have had little responsibility other than numbering and recording bills when they are introduced. The position was continued, however, with primary focus as a backup position to absent desk force personnel. As a result, the bill control clerk receives 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 each 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 2001 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. In 2001 a general increase of five percent, rounded to the nearest dollar, was provided as well as 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. The committee recommends a general increase of five percent, rounded to the nearest dollar. This was primarily in recognition of the average pay increases of three percent and two percent approved by the 57th Legislative Assembly for state employees. As a result of this recommendation, compensation would range from \$68 to \$114 per day (\$8.50 to \$14.25 per hour based on an eight-hour day). 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 provide flexibility in the hiring of employee after adoption of the resolution. By designating positions and compensation levels, and not naming employees, an employment committee report that names an employee and designates the position is sufficient to identify that employee, the position, and the compensation level. The committee also recommends that the concurrent resolution continue to 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

Beginning with the 55th Legislative Assembly (1997), bill and journal room services have been provided under contract. The contract has been combined with the contract for printing bills, resolutions, and journals. Only one entity bid to provide these combined services for the 56th and 57th Legislative Assemblies. For the 56th Legislative Assembly, bill and journal room services were provided at a total cost of \$38,840; and for the 57th Legislative Assembly, bill and journal room services were provided at a total cost of \$49,750.

The contractor who provided secretarial and telephone message services described efficiencies resulting from moving employees from one area to another during the 2001 legislative session and suggested there could be additional savings if employees could be assigned among three areas--secretarial, telephone message, and bill and journal room. The committee directed that these services would be open to bids under alternate proposals--bill and journal room services; secretarial and telephone message services; and secretarial, telephone message, and bill and journal room services. Details of the secretarial and telephone message service contracts are described under **Secretarial and Telephone Message Services**.

With respect to bill and journal room services, the invitation to bid called for a basic level of service similar to that provided during the 2001 legislative session. At least one person is to organize and operate the bill and journal room Monday through Friday from December 9, 2002, through January 6, 2003, excluding Christmas Day and New Year's Day; the bill and journal room is to be open between 7:00 a.m. and 5:30 p.m. on days either house is in session; at least one person is to be in the bill and journal room anytime either house is in session after 5:30 p.m.; and documents are to be distributed as soon as possible, according to a schedule in the contract. The contractor is required to provide photocopy and facsimile (fax) services to third parties upon payment of a fee set

by the contractor and retained by the contractor. In 2001 the contractor reported receiving \$237.16 for providing photocopy services and \$30 for providing fax services.

The invitation to bid requested a daily rate for five employees for approximately 75 legislative days, a daily rate for one employee for 18 days before the Legislative Assembly convenes and one day after adjournment, and the pay ranges for employees. Four entities bid to provide bill and journal room services. The bids ranged from \$393.75 to \$525 per day for 75 legislative days; \$78.75 to \$150 per day for 19 days; and hourly pay ranged from \$6.50 to \$10.50.

Secretarial and Telephone Message Services

The Legislative Assembly privatized secretarial services in 1995 rather than provide a joint secretarial pool. In 1993 the joint secretarial pool consisted of the equivalent of 10.5 stenographers and typists and cost \$56,629.20. Since 1993, the number of employees as well as the cost of secretarial services has gone down each session. During the 2001 legislative session, Spherion provided four employees for a total cost of \$24,975.97. Those employees completed 237 speeches (and made 1,008 copies), 304 press releases (1,012 copies), 36 charts (707 copies), 1,080 letters (1,789 copies), 601 faxes (1,180 copies), 148 mail merges (7,052 copies) and 193 miscellaneous documents (9,430 copies).

The Legislative Assembly privatized the telephone message service in 2001 rather than employ telephone attendants. In 1999 the Legislative Assembly employed a chief telephone attendant, eight telephone attendants, and two telephone pages at a total salary and Social Security cost of \$57,169.69. The number of telephone calls using the incoming WATS lines to the message center has gone down every legislative session since 1993, when 62,320 calls were received. During the 2001 legislative session, 14,653 calls were received. The 2001 figure includes 950 voice mail messages during the evening and 425 voice mail messages during the day.

During the 2001 legislative session, telephone message services were provided by Spherion, the same contractor that provided secretarial services. Spherion provided nine telephone message service employees at a cost of \$44,963.29. One of the employees was cross-trained and "floated" between the telephone message center and the secretarial service area as workload required. Spherion recommended at least two people be cross-trained to work in either area, pointed out the savings realized by flexible scheduling and workflow management, and suggested bill and journal room services be added to the contract to allow for further savings by having three areas among which employees could be assigned.

The committee determined that telephone message and secretarial services should continue to be provided on a consolidated contract basis. With respect to secretarial services, the invitation to bid continued the base level of service as in 2001--four core employees. With respect to telephone message services, the invitation to

bid continued the base level of service as in 2001--nine telephone attendants, with one of the attendants designated as the onsite supervisor.

To ensure proper use of secretarial services, the committee reviewed the *Policy Regarding Secretarial Services to Legislators* approved by the Legislative Council in November 2000. 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; limits 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; limits merge requests to 25 individual addresses unless otherwise approved by the majority leader or minority leader, as appropriate; 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.

As described under **Bill and Journal Room Services**, bids were solicited for three alternate proposals--bill and journal room services; secretarial and telephone message services; and secretarial, telephone message, and bill and journal room services. The alternates provided for secretarial and telephone message services to be provided between 7:30 a.m. and 5:30 p.m. and bill and journal room services to be provided between 7:00 a.m. and 5:30 p.m. on each legislative day; described how the 2001 contractor billed less than the contract price due to flexible scheduling and workflow management; required designation of an onsite supervisor in each area; and required designation of an account manager or liaison to manage the communication process between the Legislative Council, the specific area involved, and the contractor.

The invitation to bid to provide secretarial and telephone message services requested a daily rate for 13 employees for approximately 75 legislative days and the pay ranges for employees. Three entities bid to provide secretarial and telephone message services. The bids ranged from \$1,023.75 to \$1,085.76 per day for 75 legislative days; and hourly pay ranged from \$6.50 to \$8.50. In 2001 secretarial and telephone message services were provided under a contract price of \$1,044.40 per day, but the contractor billed at the effective rate of \$908.30 per day due to efficiencies resulting from worker management, as explained earlier in this report.

The invitation to bid to provide combined secretarial, telephone message, and bill and journal room services requested a daily rate for 18 employees for approximately 75 legislative days, a daily rate for one employee for 18 days before the Legislative Assembly convenes and one day after adjournment, and the pay ranges for employees. Three entities bid to provide the combined services. The bids in the two categories ranged from \$1,417.50 to \$1,543.04 per day for 75 legislative days; \$78.75 to \$98.64 per day for 19 days; and hourly pay ranged from \$6.50 to \$9.25.

The committee determined that the opportunity for efficiencies in workload management and employee assignment could be even greater than that experienced under the combined secretarial and telephone message services contract in 2001 if one contractor provided all three types of services. The committee recommends accepting the combined bid by Spherion, Bismarck, for providing secretarial, telephone message, and bill and journal room services during the 2003 legislative session.

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. Since the beginning of the program each intern has received a stipend as a means of covering the expense of participating in the program. In 2001 the stipend was in the amount of \$5,250 (\$1,500 per month) for the 3.5-month program.

The American Bar Association conducts accreditation reviews of the Law School every seven years and recently raised the question whether the stipend constituted "compensation" for participating in a program outside the law school for law school credit.

The committee approved continuation of the program for the 58th Legislative Assembly at the same number as authorized in 2001 (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 also authorized an increase in the stipend to \$1,550 per month and authorized the Legislative Council staff to make arrangements with the law school to resolve the compensation issue for law students as necessary to ensure continued accreditation of the law school by the American Bar Association.

Legislative Tour Guide Program

For the past 13 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 2003 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 2003 legislative session under the same arrangements as in the past.

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 have alternated as coordinator of the program. The committee authorized the Legislative Council staff to invite the Bismarck and Mandan ministerial associations to continue to schedule chaplains for opening prayers for both houses each day of the 2003 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 that they have until December 31, 2002, to schedule out-of-town clergy to give the opening prayer any day of the legislative session for their respective house during the 2003 legislative session.

Organizational Session Agenda

The committee approved a tentative agenda for the 2002 organizational session. Two major changes are made to the traditional agenda for the organizational session. After reviewing information on the time needed to update computers for new legislators, assign computers to new legislators, and provide computer training to new legislators, the committee recommended to the Legislative Council that the organizational session be scheduled for Monday through Wednesday rather than Tuesday through Thursday. At its meeting on Tuesday, June 25, 2002, the Legislative Council selected Monday, December 2, as the date for convening the organizational session.

The second major change was the time for convening the organizational session on the first day. The committee determined that convening the session at 1:00 p.m. would allow legislators time to travel to the Capitol on Monday rather than during the evening of the previous day. Basically, the traditional procedural items scheduled in the morning were moved to the afternoon and the orientation sessions for freshman legislators and the computer education classes for veteran legislators were moved to the morning.

The agenda was also modified to reflect events as they occurred in 2000. Time was set aside for caucuses on Monday afternoon. Various presentations were rearranged to reflect the times they were made in 2000. Presentations on affiliated organizations and the impact of the federal Americans with Disabilities Act were removed from the agenda. The training sessions for legislators who have been assigned personal computers were scheduled on tracks parallel to the orientation sessions received by freshman legislators. On the third

day, each house is scheduled to convene at 8:30 a.m. rather than 9:00 a.m. so the Governor's budget message can be presented at 10:00 a.m. and the Legislative Assembly can adjourn at 10:40 a.m. This will allow the Budget Section to convene at 11:00 a.m. and complete its work by 5:00 p.m. on Wednesday rather than continue into a second day.

Recommended Bill -

Organizational Session Agenda

The committee recommends Senate Bill No. 2051 to amend NDCC Section 54-03.1-03, relating to the agenda of the organizational session. The bill updates that section to recognize that there are interim commissions as well as committees, to recognize the current practices of electing leaders before the organizational session convenes, to recognize that all procedural committees are appointed and that some begin work during the organizational session, to delete the reference to the Senate Committee on Committees because that procedural committee is covered under other language in the section, and to delete the reference to presentation of committee preferences because those preferences are surveyed before the organizational session convenes.

State of the State Address

During the 2001 legislative session, the House and Senate convened in joint session at 1:15 p.m. on the first legislative day. Six escort committees were appointed to escort various officials, former officials, and spouses into the chamber--one for the Lieutenant Governor and his spouse, one for the Chief Justice, one for former Governors and their spouses, one for former Chief Justices and their spouses, one for the United States Congressman from the state, and one for the Governor and his spouse and children. 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 2003 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 2003 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 Committee and the Legislative Management Committee, a spokesman from the tribes has addressed each house of the Legislative

Assembly during the first week of the 1985-2001 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 58th 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, which requires 13 agricultural commodity promotion groups to 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 days of the regular legislative session. The committee designated the second legislative day the Agriculture Committees meet--Friday, January 10, 2003--as the day for a joint hearing by the Senate and House Agriculture Committees to receive this report.

Commissioner of Commerce Report

The committee reviewed NDCC Section 54-60-03, which requires the Commissioner of Commerce to report between the 1st and 10th legislative day of the regular legislative session to a standing committee of each house as determined by the Legislative Council. The report is to be with respect to the department's goals, objectives, and activities. The committee determined the reports should be made to the Industry, Business and Labor Committees on the second legislative day those committees meet--Monday, January 13, 2003.

Labor Commissioner Report

The committee reviewed 2001 Session Laws, Chapter 145, Section 15, which requires the Labor Commissioner to report between the 1st and 10th legislative day to a standing committee of each house of the 58th Legislative Assembly. The report is to be with respect to the nature, number, status, and disposition of complaints received by the Labor Department under the Human Rights Act and the Housing Discrimination Act. The committee determined the report should be made to the Judiciary Committees on the second day those committees meet--Monday, January 13, 2003.

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 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 Assembly adopted those rules as Joint Rules 1001 through 1004.

The committee makes no recommendation regarding changes to the legislative code of ethics.

MISCELLANEOUS MATTERS

Legislator Pay Periods

The committee received information about the ConnectND project, which is a statewide accounting, human resource, and payroll project under development for state agencies, including the University System. Of special importance to legislators is the effect of the project's goal of having state government and the University System use the same payroll system. North Dakota Century Code Section 54-03-20 provides legislators the option of receiving their \$250 per month compensation either payable every six months or monthly. The committee was assured that the ConnectND project will not affect the legislators' option of being paid every six months rather than monthly.

Meeting With Legislative Compensation Commission

The committee met with members of the Legislative Compensation Commission to discuss legislative compensation. The commission is not making any recommendation with respect to changing legislators' compensation.

North Dakota Century Code Publication

During the 1999-2000 interim, the Legislative Management Committee reviewed the arrangement with LEXIS Law Publishing for publication of the North Dakota Century Code. The review was in response to an inquiry from West Group (a publisher of state statutes). In 1959 the state contracted with The Allen Smith Company to publish the North Dakota Century Code. Since then, The Michie Company (now a member of the LexisNexis Group, a division of Reed Elsevier, Inc.) acquired The Allen Smith Company; the state contracted with LexisNexis in 1991 for electronic use of the Century Code; and the state contracted with LexisNexis in 1994 to publish the code in CD-ROM format.

In 2000 the Legislative Management 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 request

recognized that this process would extend through the 2001-03 biennium due to the substantial amount of time required to prepare specifications containing all items necessary for an annotated code product, the countervailing constraints on available time due to the 2001 regular and special legislative sessions, and the current arrangements for publication of the 2001 pocket supplements and replacement volumes.

The committee received information that the current arrangement with the publisher provides total flexibility because there is no definite term during which changes cannot be made. Any new contract with a definite term could result in a lack of flexibility, especially with the changes in publishing which are resulting from technology and the Internet. The state subscribes to 700 sets of the code and the estimated cost of the 2003-04 subscription service is \$280,000. In 2002 the publisher proposed a 25 percent discount for state subscriptions to the North Dakota Century Code. The committee determined that the offer of LexisNexis to provide a discount for state purchases of North Dakota Century Code subscriptions should be accepted, effectively continuing the current contract.

Business Continuity Plan

The committee received information on the Governor's directive to state agencies to prepare business continuity and disaster recovery plans. Of concern to the committee was whether the process adequately ensured that planning efforts of the Governor, Office of Management and Budget, and legislative branch would complement one another.

The Legislative Council staff was authorized to develop a disaster recovery plan in coordination with appropriate state agencies on behalf of the Legislative Council and the Legislative Assembly.

State Capitol Security Arrangements

The committee received information on Capitol security arrangements. The carport tunnel at the south entrance has been closed to vehicular traffic; access to certain entrances requires security key cards; all parcel deliveries to the Capitol are directed to one entrance; all deliverymen must sign a login sheet; vendors and contractors must have photo IDs and must log in when entering the complex; agencies open mail in secured areas before distribution; and hours the building is open to the public have been adjusted to 7:00 a.m. to 5:30 p.m.

The committee recommends that the appropriate session employees be informed of the special awareness needed for opening and distributing mail legislators receive during legislative sessions.

The committee authorized the installation of video-cameras on the legislative information kiosk in Memorial Hall to provide video coverage of Memorial Hall.

State Capitol Risk Management

The committee received information on tort claims and lawsuits filed against the state and state employees,

especially with respect to operation of the Capitol complex. Between April 22, 1995, and December 31, 2001, the risk management fund has paid \$4,171 with respect to slips and falls inside the building; \$1,510 with respect to state equipment throwing debris or striking parked vehicles; and \$607 with respect to slips and falls on the sidewalks and parking lots. Of those claims, \$3,604 in claims was paid to an individual who missed a step in the Senate balcony and fell backwards and was injured.

Health Insurance Mandates Procedure

The Budget Committee on Health Care was assigned the responsibility under NDCC Section 54-03-28 to contract with an entity to provide a cost-benefit analysis of every legislative measure mandating health insurance coverage of services or payment for specified providers of services, or an amendment that mandates such coverage or payment. As a result of reviewing the requirements for a cost-benefit analysis, that committee recommended that the Legislative Management Committee consider amendments to Senate and House Rules 402 to designate the fifth legislative day as the deadline for introducing a bill mandating health insurance coverage of services or payment for specified providers of services. The earlier deadline for introducing such a bill was intended to provide sufficient time to request and receive a cost-benefit analysis.

The committee determined that the Legislative Assembly should gain experience on the interplay between normal introduction deadlines and the time required to prepare cost-benefit analyses before further restricting a legislator's ability to introduce legislation. Thus, the committee does not recommend amendments to Senate and House Rules 402 to designate the fifth legislative day as the deadline for introducing a bill mandating health insurance coverage of services or payment for specified providers of services.

The committee considered a bill draft that would have replaced the requirement that the standing committee make the determination of whether a bill mandates coverage and then request a cost-benefit analysis prepared by an entity under contract with the Legislative Council and paid by the Insurance Commissioner with a requirement that the Insurance Commissioner review introduced bills and make the determination of which bills should be accompanied by cost-benefit analyses prepared by a private entity under contract with the commissioner. The proposed procedure is similar to the procedure provided by NDCC Section 54-03-25, which requires the Workers Compensation Bureau to review measures affecting workers' compensation benefits or premium rates. The Insurance Commissioner opposed the bill draft because the commissioner would have become involved in the legislative process. The committee determined that the Legislative Assembly should retain its responsibility in determining whether a measure imposes a mandate. The committee makes no recommendation with respect to the proposed bill draft.

Secretary of State's Certification of Members

The Secretary of State expressed concern over the difference between the actual practice followed in certifying members entitled to serve in the Legislative Assembly and the procedure provided by NDCC Section 54-03-03, which provides that the Secretary of the Senate and the Chief Clerk of the House of Representatives are to file certificates of members of their respective houses who have been issued certification of election. The committee suggested the Secretary of State address this issue during the 2003 legislative session by preparing and pre-filing a bill under the agency bill introduction privilege.

SPECIAL SESSION ARRANGEMENTS

The committee reviewed three areas of consideration for the special session—legislative rules, session employees, and miscellaneous matters.

The committee submitted this portion of the report to the Legislative Council on November 6, 2001. The Council accepted the report for submission to the 57th Legislative Assembly, which met in special session November 26-30, 2001.

Legislative Rules

The committee reviewed the legislative rules amendments adopted during the 1991 special session, which was called primarily for legislative redistricting purposes. The amendments primarily addressed the introduction of measures, length of time to consider a measure after it is reported from committee, length of time to reconsider a measure, and special committees during the special session. The committee's recommendations are substantively similar to those rules amendments adopted during the 1991 special session.

The committee recommends amendment of Senate and House Rules 401(1), 402(1) and (2), and 403, and Joint Rule 208 to provide that bills and resolutions, other than bills and resolutions introduced by the Legislative Council, must be introduced through the Delayed Bills Committee of the house of introduction. The requirement for approval by the Delayed Bills Committee is intended to limit introduction of measures to those measures of significant importance for consideration during the special session. The special session is primarily to address legislative redistricting. By requiring measures to be introduced through the Delayed Bills Committees, bills and resolutions would be screened to assure promotion of this objective.

The committee recommends amendment of Senate and House Rules 318(4), 337, and 601, and Joint Rule 207 to authorize a measure to be considered on the same day it is reported from committee or placed on the consent calendar. Thus, the normal time frame for consideration of a measure is shortened from the day after a measure is reported from committee or placed on the consent calendar.

The committee recommends amendment of Senate and House Rules 346 to authorize a measure to be transmitted to the other house immediately after

approval unless a member gives notice of intention to reconsider. If notice is given, the measure cannot be transmitted until the end of that day. Without this amendment, the normal procedure would be to retain the measure until the end of the next legislative day.

The committee recommends amendment of Joint Rule 202 to allow either house to reconsider receding before a conference is called. Without the amendment, reconsideration could not be made until the next legislative day.

The committee recommends amendment of Joint Rule 501(4) to require the return of a fiscal note within one day of the request instead of five days. This recommendation recognizes the shortened time frames for considering bills and resolutions during the special session.

The committee recommends creation of Joint Rules 303 and 304 to establish a joint legislative redistricting committee and a joint technical corrections committee. The joint legislative redistricting committee would be responsible for all bills and resolutions relating to redistricting. The joint technical corrections committee would be responsible for all other bills and resolutions relating to statutory or constitutional revision.

The committee recommends amendment of Senate and House Rules 504 to eliminate specific meeting days for committees. Although meetings may be called at times and on days as deemed necessary, the specific listing of days that three-day and two-day committees may meet could cause misconceptions if such committees met on other than regularly scheduled days.

Session Employees

The committee reviewed the employee positions filled during the 1991 special session—17 Senate positions and 18 House positions. The committee was especially cognizant of the reduction in employee positions and numbers since 1991 due to computerization of the chambers and the legislative process. The committee recommends that the Senate Employment Committee employ not more than 10 Senate employees and the House Employment Committee employ not more than 11 House employees for the 2001 special session, with the positions left to the discretion of the employment committees. The employees and their positions can be designated by reports of the respective employment committees during the special session. The rates of pay for employees during the special session would be the compensation levels established by 2001 Senate Concurrent Resolution No. 4007, unless compensation is changed through concurrent resolution introduced during the special session.

Miscellaneous Matters

The committee recognizes the nature of a special session for redistricting purposes would be limited in scope. As such, many services or items normally available during a regular session would not be feasible or economical during the special session. During the 2001 regular session, the telephone message, secretarial, and

bill and journal room services were provided by private contractors (these services were not provided during the 1991 special session). During the 2001 special session, constituents can contact their legislators through regular channels or by e-mail directly to a legislator's notebook computer, legislators can contact their constituents through regular channels or by telephone or e-mail, and copies of measures introduced will be available from the counters in front of the bill and journal room and at the

information kiosk and from the Legislative Branch web site. The LAWS system will not be available during the special session primarily because the legislators' replacement personal computers have a Windows 2000 operating system and the LAWS system upgrade to work with Windows 2000 will not be finished before mid-2002. Legislative information will be available in printed format and through the legislative branch web site.

LEGISLATIVE REDISTRICTING COMMITTEE

The Legislative Redistricting Committee was assigned one study. House Concurrent Resolution No. 3003 directed the study and the development of a legislative redistricting plan or plans for use in the 2002 primary election.

Committee members were Representatives Mike Timm (Chairman), Ole Aarsvold, Al Carlson, William R. Devlin, Glen Froseth, Pam Gulleason, Lyle Hanson, and David Monson and Senators Bill Bowman, Randel Christmann, Layton Freborg, Ray Holmberg, Ed Kringstad, Tim Mathern, and Steven W. Tomac.

The committee submitted this report to the Legislative Council on November 6, 2001. The Council accepted the report for submission to the Legislative Assembly.

BACKGROUND

North Dakota Law

Constitutional Provisions

Article IV, Section 1, of the Constitution of North Dakota provides that the "senate must be composed of not less than forty nor more than fifty-four members, and the house of representatives must be composed of not less than eighty nor more than one hundred eight members." Article IV, Section 2, 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.

Article IV, Section 2, requires the Legislative Assembly 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." Under that section, one senator and at least two representatives must be apportioned to each senatorial district. Section 2 also provides that two senatorial districts may be combined when a single senatorial district includes a federal facility or installation containing over two-thirds of the population of a single-member senatorial district and that elections may be at large or from subdistricts.

Article IV, Section 3, 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.

Statutory Provisions

In addition to the constitutional requirements, North Dakota Century Code (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, that section provides that 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, which was amended when the 1991 redistricting plan was adopted, provided for the staggering of Senate terms after redistricting in 1991. That section provided that senators from even-numbered districts be elected in 1992 for a term of four years, and senators from odd-numbered districts be elected in 1994 for a term of four years. That section also provided that the senator from the newly created District 41 be elected in 1992 for a term of two years. In addition, that section provided that a senator from a district in which there was another incumbent as a result of redistricting be elected in 1992 for a term of four years.

Because of the change in the term of office of members of the House of Representatives to four years and the provisions in NDCC Section 54-03-01.10 for the staggering of terms of representatives, the staggering of House terms must be addressed in any redistricting plan.

As a result of concerns regarding the timetable for calling a special election to vote on a referral of a redistricting plan, the 1991 Legislative Assembly amended NDCC Section 16.1-01-02.2 at the November 1991 special session. The amendment to the section provided that "notwithstanding any other provision of law, the governor may call a special election to be held in thirty to fifty days after the call if a referendum petition has been submitted to refer a measure or part of a measure that establishes a legislative redistricting plan."

North Dakota Century Code Section 16.1-03-17 provides that if apportionment of the Legislative Assembly becomes effective after the organization of political parties and before the primary or the general election, the Secretary of State shall establish a timetable for the reorganization of the parties before the ensuing election.

North Dakota Century Code Section 16.1-04-03 provides that the board of county commissioners or the governing body of a city responsible for establishing precincts within the county or city must establish or reestablish voting precincts within 35 days after the effective date of a legislative reapportionment.

North Dakota Century Code Chapter 11-07 establishes the procedures for redistricting of counties for board of county commissioner districts.

FEDERAL LAW

Before 1962 the courts followed a policy of nonintervention with respect to legislative redistricting. However, in 1962, the United States Supreme Court, in *Baker v. Carr*, 369 U.S. 186 (1962), determined that the courts would provide relief in state legislative redistricting cases when there are constitutional violations.

Population Equality

In *Reynolds v. Sims*, 377 U.S. 533 (1964), the United States Supreme Court held that the equal protection clause of the 14th Amendment to the United States Constitution requires states to establish legislative districts substantially equal in population. The Court also ruled that both houses of a bicameral legislature must be apportioned on a population basis. Although the Court did not state what degree of population equality is required, it stated that "what is marginally permissible in one state may be unsatisfactory in another depending upon the particular circumstances of the case."

The measure of population equality most commonly used by the courts is overall range. The overall range of a redistricting plan is the sum of the deviation from the ideal district population (the total state population divided by the number of districts) of the most and the least populous districts. In determining overall range, the plus and minus signs are disregarded, and the number is expressed as an absolute percentage.

In *Reynolds*, the United States Supreme Court recognized a distinction between congressional and legislative redistricting plans. That distinction was further emphasized in a 1973 Supreme Court decision, *Mahan v. Howell*, 410 U.S. 315 (1973). In that case, the Court upheld a Virginia legislative redistricting plan that had an overall range among House districts of approximately 16 percent. The Court stated that broader latitude is afforded to the states under the equal protection clause in state legislative redistricting than in congressional redistricting in which population is the sole criterion of constitutionality. In addition, the Court said the Virginia General Assembly's state constitutional authority to enact legislation dealing with political subdivisions justified the attempt to preserve political subdivision boundaries when drawing the boundaries for the House of Delegates.

A 10 percent standard of population equality among legislative districts was first addressed in two 1973 Supreme Court decisions, *Gaffney v. Cummings*, 412 U.S. 735 (1973), and *White v. Regester*, 412 U.S. 755 (1973). In those cases, the Court upheld plans creating house districts with overall ranges of 7.8 percent and 9.9 percent. The Court determined the overall ranges did not constitute a prima facie case of denial of equal protection. In *White*, the Court noted, "Very likely larger differences between districts would not be tolerable without justification 'based on legitimate considerations incident to the effectuation of a rational state policy'."

Justice Brennan's dissents in *Gaffney* and *White* argued that the majority opinions established a 10 percent de minimus rule for state legislative district redistricting. He asserted that the majority opinions provided that states would be required to justify overall ranges of 10 percent or less. The Supreme Court adopted that 10 percent standard in later cases.

In *Chapman v. Meier*, 420 U.S. 1 (1975), the Supreme Court rejected the North Dakota Legislative Assembly redistricting plan with an overall range of approximately 20 percent. In that case, the Court said the plan needed special justification, but rejected the

reasons given, which included an absence of a particular racial or political group whose power had been minimized by the plan, the sparse population of the state, the desire to maintain political boundaries, and the tradition of dividing the state along the Missouri River.

In *Conner v. Finch*, 431 U.S. 407 (1977), the Supreme Court rejected a Mississippi plan with a 16.5 percent overall range for the Senate and a 19.3 percent overall range for the House. However, in *Brown v. Thomson*, 462 U.S. 835 (1983), the Court determined that adhering to county boundaries for legislative districts was not unconstitutional even though the overall range for the Wyoming House of Representatives was 89 percent.

In *Brown*, each county was allowed at least one representative. Wyoming has 23 counties and its legislative apportionment plan provided for 64 representatives. Because the challenge was limited to the allowance of a representative to the least populous county, the Supreme Court determined that the grant of a representative to that county was not a significant cause of the population deviation that existed in Wyoming. The Court concluded that the constitutional policy of ensuring that each county had a representative, which had been in place since statehood, was supported by substantial and legitimate state concerns and had been followed without any taint of arbitrariness or discrimination. The Court found that the policy contained no built-in biases favoring particular interests or geographical areas and that population equality was the sole other criterion used. The Court stated that a legislative apportionment plan with an overall range of less than 10 percent is not sufficient to establish a prima facie case of invidious discrimination under the 14th Amendment which requires justification by the state. However, the Court further concluded that a plan with larger disparities in population creates a prima facie case of discrimination and must be justified by the state.

In *Brown*, the Supreme Court indicated that giving at least one representative to each county could result in total subversion of the equal protection principle in many states. That would be especially true in a state in which the number of counties is large and many counties are sparsely populated and the number of seats in the legislative body does not significantly exceed the number of counties.

In *Board of Estimate v. Morris*, 489 U.S. 688 (1989), the Supreme Court determined an overall range of 132 percent was not justified by New York City's proffered governmental interests. The city argued that because the Board of Estimate was structured to accommodate natural and political boundaries as well as local interests, the large departure from the one-person, one-vote ideal was essential to the successful government of the city, a regional entity. However, the Court held that the city failed to sustain its burden of justifying the large deviation.

In a more recent federal district court decision, *Quilter v. Voinovich*, 857 F. Supp. 579 (N.D. Ohio 1994), the court ruled that a legislative district plan with an overall range of 13.81 percent for House districts and

10.54 percent for Senate districts did not violate the one-person, one-vote principle. The court recognized the state interest of preserving county boundaries, and the plan was not advanced arbitrarily. The decision came after the Supreme Court remanded the case to the district court. The Supreme Court stated that in the previous district court decision, the district court mistakenly held that total deviations in excess of 10 percent cannot be justified by a policy of preserving political subdivision boundaries. The Supreme Court directed the district court to follow the analysis used in *Brown*, which requires the court to determine whether the plan could reasonably be said to advance the state's policy, and if so, whether the population disparities exceed constitutional limits.

Although the federal courts have generally maintained a 10 percent standard, a legislative redistricting plan within the 10 percent range may not be safe from a constitutional challenge if the challenger is able to show discrimination in violation of the equal protection clause. If a legislative redistricting plan with an overall range of more than 10 percent is challenged, the state has the burden to demonstrate that the plan is necessary to implement a rational state policy and that the plan does not dilute or eliminate the voting strength of a particular group of citizens. A plan with an overall range over 10 percent which is designed to guarantee representation to political subdivisions may be upheld if a large number of representatives are apportioned among a relatively small number of political subdivisions.

Partisan Gerrymandering

Before 1986 the courts took the position that partisan or political gerrymandering was not justiciable. In *Davis v. Bandemer*, 478 U.S. 109 (1986), the United States Supreme Court stated that political gerrymandering is justiciable. However, the Court determined that the challengers of the legislative redistricting plan failed to prove that the plan denied them fair representation. The Court stated that a particular "group's electoral power is not unconstitutionally diminished by the simple fact of an apportionment scheme that makes winning elections more difficult, and a failure of proportional representation alone does not constitute impermissible discrimination under the Equal Protection Clause." The Court concluded that "unconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or group of voters' influence on the political process as a whole." Therefore, to support a finding of unconstitutional discrimination, there must be evidence of continued frustration of the will of the majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process.

In 1988 a federal district court in California determined that a partisan gerrymandering case was justiciable. In *Badham v. Eu*, 694 F. Supp. 664 (1988), the court ruled that the challengers of the California congressional redistricting plan failed to demonstrate that they had been denied a fair chance to influence the political process. The Supreme Court summarily

affirmed the district court's ruling without an opinion in 1989.

Other federal district courts have also addressed the partisan gerrymandering issue since 1989 and have also found no valid claims of impermissible discrimination. Thus, although partisan gerrymandering cases are now justiciable, proving unconstitutional discrimination appears to be a very difficult task.

Multimember Districts

Section 2 of the federal Voting Rights Act prohibits a state or political subdivision from imposing voting qualifications, standards, practices, or procedures that result in the denial or abridgment of a citizen's right to vote on account of race, color, or status as a member of a language minority group. A violation of Section 2 may be proved through a showing that as a result of the challenged practice or standard, the challengers of the plan did not have an equal opportunity to participate in the political process and to elect candidates of their choice.

Most of the decisions under the Voting Rights Act have involved questions regarding the use of multimember districts to dilute the voting strengths of racial and language minorities. In *Reynolds*, the United States Supreme Court held that multimember districts are not unconstitutional per se; however, the Court has indicated it prefers single-member districts, at least when the courts draw the districts in fashioning a remedy for an invalid plan. The Court has stated that a redistricting plan including multimember districts will constitute an invidious discrimination only if it can be shown that the plan, under the circumstances of a particular case, would operate to minimize or eliminate the voting strength of racial or political elements of the voting population.

The landmark case addressing a Section 2 challenge is *Thornburg v. Gingles*, 478 U.S. 39 (1986). In that case, the Supreme Court stated that a minority group challenging a redistricting plan must prove that (1) the minority is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the minority is politically cohesive; and (3) in the absence of special circumstances, bloc voting by the majority usually defeats the minority's preferred candidate. To prove that bloc voting by the majority usually defeats the minority group, the use of statistical evidence is necessary.

The Voting Rights Act also requires certain states and political subdivisions to submit their redistricting plans to the United States Department of Justice or the district court of the District of Columbia for review. North Dakota is not subject to that requirement.

Racial Gerrymandering

Racial gerrymandering is the deliberate distortion of boundaries for racial purposes. Until redistricting in the 1990s, racial gerrymandering had generally been used in the South to minimize the voting strength of minorities. However, because the United States Department of Justice and some federal courts had indicated that

states would be required to maximize the number of minority districts when redistricting, many states adopted redistricting plans that used racial gerrymandering to create more minority districts or to create minority influence districts when there was not sufficient population to create a minority district.

The United States Supreme Court has subsequently held several redistricting plans to be unconstitutional as a result of racial gerrymandering. In *Shaw v. Reno*, 509 U.S. 630 (1993), the Supreme Court invalidated a North Carolina plan due to racial gerrymandering. In that case, the Court made it clear that race-conscious redistricting may not be impermissible in all cases. However, the Court stated if race is the primary consideration in creating districts "without regard for traditional districting principles," a plan may be held to be unconstitutional.

Through the *Shaw* decision and subsequent decisions of the United States Supreme Court, seven policies have been identified as being "traditional districting principles." Those policies are:

1. Compactness.
2. Contiguity.
3. Preservation of political subdivision boundaries.
4. Preservation of communities of interest.
5. Preservation of cores of prior districts.
6. Protection of incumbents.
7. Compliance with Section 2 of the Voting Rights Act.

HISTORY OF REDISTRICTING IN NORTH DAKOTA

Despite the requirement in the Constitution of North Dakota that the state be redistricted after each census, the Legislative Assembly did not redistrict itself between 1931 and 1963. At the time, the Constitution of North Dakota provided that (1) the Legislative Assembly must apportion itself after each federal decennial census; and (2) if the Legislative Assembly failed in its apportionment duty, a group of designated officials was responsible for apportionment. Because the 1961 Legislative Assembly did not apportion itself following the 1960 census, the apportionment group (required by the constitution to be the Chief Justice of the Supreme Court, the Attorney General, the Secretary of State, and the majority and minority leaders of the House of Representatives) issued a plan, which was challenged in court. In *State ex rel. Lien v. Sathre*, 113 N.W.2d 679 (1962), the North Dakota Supreme Court determined that the plan was unconstitutional and the 1931 plan continued to be law.

The 1963 Legislative Assembly passed a redistricting plan that was heard by the Senate and House Political Subdivisions Committees. The 1963 plan and Sections 26, 29, and 35 of the state constitution were challenged in federal district court and found unconstitutional as violating the equal protection clause in *Paulson v. Meier*, 232 F. Supp. 183 (1964). The 1931 plan was also held invalid. Thus, there was no constitutionally valid legislative redistricting law in existence at that time. The court concluded that adequate time was not available with which to formulate a proper plan for the 1964

election and the Legislative Assembly should promptly devise a constitutional plan.

A conference committee of the 1965 Legislative Assembly (consisting of the majority and minority leaders of each house and the chairmen of the State and Federal Government Committees) produced a redistricting plan. In *Paulson v. Meier*, 246 F. Supp. 36 (1965), the federal district court found the 1965 redistricting plan unconstitutional. The court reviewed each plan introduced in the 1965 Legislative Assembly and specifically focused on a plan prepared for the Legislative Research Committee (predecessor to the Legislative Council) by two consultants hired by the committee to devise a redistricting plan. That plan had been approved by the interim Constitutional Revision Committee and the Legislative Research Committee and was submitted to the 1965 Legislative Assembly. The court slightly modified that plan and adopted it as the plan for North Dakota. The plan contained five multimember senatorial districts, violated county lines in 12 instances, and had 25 of 39 districts within 5 percent of the average population, four districts slightly over 5 percent, and two districts exceeding 9 percent.

In 1971 an original proceeding was initiated in the North Dakota Supreme Court challenging the right of senators from multimember districts to hold office. The petitioners argued that the multimembership violated Section 29 of the Constitution of North Dakota, which provided that each senatorial district "shall be represented by one senator and no more." The court held that Section 29 was unconstitutional as a violation of the equal protection clause of the United States Constitution and that multimember districts were permissible. *State ex rel. Stockman v. Anderson*, 184 N.W.2d 53 (1971).

The 1971 Legislative Assembly failed to redistrict itself after the 1970 federal census and an action was brought in federal district court which requested that the court order redistricting and declare the 1965 plan invalid. The court entered an order to the effect the existing plan was unconstitutional and the court would issue a plan. The court appointed three special masters to formulate a plan and adopted a plan submitted by Mr. Richard Dobson. The "Dobson" plan was approved for the 1972 election only. The court recognized weaknesses in the plan, including substantial population variances and a continuation of multimember districts.

The 1973 Legislative Assembly passed a redistricting plan developed by the Legislative Council's interim Committee on Reapportionment, which was appointed by the Legislative Council chairman and consisted of three senators, three representatives, and five citizen members. The plan was vetoed by the Governor, but the Legislative Assembly overrode the veto. The plan had a population variance of 6.8 percent and had five multimember senatorial districts. The plan was referred and was defeated at a special election held on December 4, 1973.

In 1974 the federal district court in *Chapman v. Meier*, 372 F. Supp. 371 (1974), made the "Dobson" plan permanent. However, on appeal, the United States

Supreme Court ruled the "Dobson" plan unconstitutional in *Chapman v. Meier*, 420 U.S. 1 (1975).

The 1975 Legislative Assembly adopted the "Dobson" plan but modified it by splitting multimember senatorial districts into subdistricts. The plan was proposed by individual legislators and was heard by the Joint Reapportionment Committee, consisting of five senators and five representatives. The plan was challenged in federal district court and was found unconstitutional. In *Chapman v. Meier*, 407 F. Supp. 649 (1975), the court held that the plan violated the equal protection clause because of the total population variance of 20 percent. The court appointed a special master to develop a plan, and the court adopted that plan.

The 1981 Legislative Assembly passed House Concurrent Resolution No. 3061, which directed the Legislative Council to study and develop a legislative redistricting plan. The Legislative Council chairman appointed a 12-member interim Reapportionment Committee consisting of seven representatives and five senators. The chairman directed the committee to study and select one or more redistricting plans for consideration by the 1981 reconvened Legislative Assembly. The committee completed its work on October 6, 1981, and submitted its report to the Legislative Council at a meeting of the Council in October 1981.

The committee instructed its consultant, Mr. Floyd Hickok, to develop a plan for the committee based upon the following criteria:

1. The plan should have 53 districts.
2. The plan should retain as many districts in their present form as possible.
3. No district could cross the Missouri River.
4. The population variance should be kept below 10 percent.

Mr. Hickok presented a report to the committee in which the state was divided into 11 blocks. Each block corresponded to a group of existing districts with only minor boundary changes. The report presented a number of alternatives for dividing most blocks. There were 27,468 different possible combinations among the alternatives presented.

The bill draft recommended by the interim committee incorporated parts of Mr. Hickok's plans and many of the plans presented as alternatives to the committee. The plan was introduced in a reconvened session of the Legislative Assembly in November 1981 and was heard by the Joint Reapportionment Committee. The committee considered a total of 12 legislative redistricting bills. The reconvened session of the 1981 Legislative Assembly adopted a redistricting plan that consisted of 53 senatorial districts. The districts containing the Grand Forks and Minot Air Force Bases were combined with districts in those cities and each elected two senators and four representatives at large.

The 1991 Legislative Assembly adopted House Concurrent Resolution No. 3026, which directed a study of legislative apportionment and development of legislative reapportionment plans for use in the 1992 primary election. The resolution encouraged the

Legislative Council to use the following criteria to develop a plan or plans:

1. Legislative districts and subdistricts had to be compact and of contiguous territory except as was necessary to preserve county and city boundaries as legislative district boundary lines and so far as was practicable to preserve existing legislative district boundaries.
2. Legislative districts could have a population variance from the largest to the smallest in population not to exceed 9 percent of the population of the ideal district except as was necessary to preserve county and city boundaries as legislative district boundary lines and so far as was practicable to preserve existing legislative district boundaries.
3. No legislative district could cross the Missouri River.
4. Senators elected in 1990 could finish their terms, except that in those districts in which over 20 percent of the qualified electors were not eligible to vote in that district in 1990, senators had to stand for reelection in 1992.
5. The plan or plans developed were to contain options for the creation of House subdistricts in any Senate district that exceeds 3,000 square miles.

The Legislative Council established an interim Legislative Redistricting and Elections Committee, which undertook the legislative apportionment study. The committee consisted of eight senators and eight representatives. The Council contracted with Mr. Hickok to provide computer-assisted services to the committee.

After the committee held meetings in several cities around the state, the committee requested the preparation of plans for 49, 50, and 53 districts based upon these guidelines:

1. The plans could not provide for a population variance over 10 percent.
2. The plans could include districts that cross the Missouri River so the Fort Berthold Reservation would be included within one district.
3. The plans had to provide alternatives for splitting the Grand Forks Air Force Base and the Minot Air Force Base into more than one district and alternatives that would allow the bases to be combined with other contiguous districts.

The interim committee recommended two alternative bills to the Legislative Council at a special meeting held in October 1991. Both of the bills included 49 districts. Senate Bill No. 2597 split the two Air Force bases so neither base would be included with another district to form a multisensorial district. Senate Bill No. 2598 placed the Minot Air Force Base entirely within one district so the base district would be combined with another district.

In a special session held November 4-8, 1991, the Legislative Assembly adopted Senate Bill No. 2597 with some amendments with respect to district boundaries. (The bill was heard by the Joint Legislative Redistricting

Committee.) The bill was also amended to provide that any senator from a district in which there was another incumbent senator as a result of legislative redistricting had to be elected in 1992 for a term of four years; to provide that the senator from a new district created in Fargo had to be elected in 1992 for a term of two years; and to include an effective date of December 1, 1991. In addition, the bill was amended to include a directive to the Legislative Council to assign to the committee the responsibility to develop a plan for subdistricts for the House of Representatives.

After conducting the subdistrict study, the interim committee recommended 1993 House Bill No. 1050 to establish House subdistricts within each Senate district except in Districts 18, 19, 38, and 40, which are the districts that include portions of the Air Force bases. The 1993 Legislative Assembly did not adopt the subdistricting plan.

The 1995 Legislative Assembly adopted House Bill No. 1385, which made final boundary changes to four districts, including placing a small portion of the Fort Berthold Reservation in District 33.

TIME DEADLINES TO BE CONSIDERED IN THE IMPLEMENTATION OF A REDISTRICTING PLAN

North Dakota Century Code Chapter 16.1-03 requires each political party to meet in each odd-numbered year to organize at the precinct, district, and state level. Section 16.1-03-17 provides that if redistricting of the Legislative Assembly becomes effective after organization of the political parties, the Secretary of State must establish a timetable for the reorganization of the parties as rapidly as possible before the ensuing election. Under that section, the Secretary of State is required to notify all county auditors of the timetable and of the details of the redistricting plan as the plan affects each county. Section 16.1-03-17 requires each county auditor to publish in the official county newspaper a notice stating the legislative redistricting has occurred; a description and a map of the new legislative districts and precincts; and the date, time, and location of the precinct caucuses and district committee meetings determined by the Secretary of State and the county auditor to be necessary according to the new districts and precincts established. (Section 16.1-04-03 requires each board of county commissioners and the governing body of any city to establish precincts within 35 days after the effective date of a redistricting plan.) After the notice is published, the political parties are required to reorganize as closely as possible in conformance with the timetable established by the Secretary of State.

North Dakota Century Code Sections 16.1-11-06 and 16.1-11-11 provide that candidates for state office and legislative and county office must submit nominating petitions by 4:00 p.m. on the 60th day before the primary election.

Article IV, Section 13, of the Constitution of North Dakota provides that, except for emergency measures and appropriation and tax measures, every law enacted by the Legislative Assembly takes effect on August 1

after its filing with the Secretary of State. However, if the bill is filed on or after August 1 and before January 1 of the following year, the law becomes effective 90 days after its filing or on a specified subsequent date. Section 13 also provides that every law enacted by a special session of the Legislative Assembly takes effect on the date specified in the Act.

TESTIMONY AND COMMITTEE CONSIDERATIONS Committee Guidelines

The committee considered redistricting plans based on 45 districts, 47 districts, 49 districts, 51 districts, and 52 districts. The committee determined that the various plans should adhere to the following criteria:

- Preserve existing district boundaries to the extent possible.
- Preserve political subdivision boundaries to the extent possible.
- Provide for a population variance of under 10 percent.

Redistricting Computers and Software

The Legislative Council purchased two personal computers and two licenses for redistricting software for use by each political faction represented on the committee. Because committee members generally agreed that each caucus should have access to a computer with the redistricting software, the committee requested the Legislative Council to purchase two additional computers and two additional redistricting software licenses.

Primary Election Deadlines

The committee received testimony regarding 2002 primary election deadlines. If a special legislative session is called by the Governor, legislation adopted during the special session becomes effective upon the date specified in the legislation. If the Legislative Council calls a reconvened session of the Legislative Assembly before January 1, 2002, any legislation adopted at the reconvened session, and not including an emergency clause, will become effective 90 days after its filing with the Secretary of State.

A representative of the Secretary of State's office informed the committee that if redistricting legislation becomes effective January 31, 2002, or later, certain statutory election deadlines and procedures would need to be amended to accommodate the conduct of the primary election.

Size of Legislative Assembly

Testimony and committee discussion revealed substantial differences in opinion regarding the appropriate size of the Legislative Assembly.

Proponents of increasing the size of the Legislative Assembly contended that increasing the Legislative Assembly from 49 to 51 or 52 districts will preserve more existing districts and lessen the impact of redistricting on rural areas of the state. The proponents of increasing

the size of the Legislative Assembly also argued that increasing the number of districts would cost about \$70,000 per district per year, or about 11 cents per person each year. They contended the increased cost was minimal and would be offset by increasing representation for the electorate, lessening the negative impact of population loss on rural areas, and minimizing the increase in geographical size of rural districts.

Proponents of maintaining 49 districts argued that there has been no significant public demand for reducing the size of the Legislative Assembly and that increasing the number of districts is not necessary.

Proponents of reducing the size of the Legislative Assembly argued that because the Legislative Assembly has reduced the number of judges, asked school districts to consolidate, and made cuts in other areas of state government, the Legislative Assembly should reduce its size. They contended that legislators in North Dakota represent significantly fewer persons than legislators in any other state and would continue to do so even if the Legislative Assembly is reduced to 45 or 47 districts. Proponents of reducing the size of the Legislative Assembly also contended that the cost savings of reducing the number of districts are substantial when viewed over a decade.

Indian Reservations

Representatives of the American Civil Liberties Union and American Indians from the Fort Berthold Reservation requested that none of the Indian reservations be split into more than one legislative district. They also urged the committee to establish House subdistricts within the districts in which the Fort Berthold, Standing Rock, and Spirit Lake Reservations are located so that American Indians will constitute a majority in a subdistrict on each of those reservations. They argued the federal Voting Rights Act of 1965 and subsequent amendments require the creation of single-member districts to prevent the dilution of the voting strength of racial and language minorities such as American Indians. They also contended that creation of House subdistricts will provide more opportunities for American Indian candidates and result in higher voting rates for American Indians.

House Subdistricts

Testimony indicated that the establishment of House subdistricts within certain legislative districts may be desirable. Proponents of establishing subdistricts in districts with a geographical area of 3,000 square miles or more argued that the concerns with respect to the large size of rural districts can be alleviated by the creation of subdistricts which would bring representatives closer to the voters.

Opponents of subdistricts argued that the creation of subdistricts in certain districts would be unfair to the voters in those districts because they would have only one representative and that the creation of subdistricts would complicate the redistricting process. They also contended that subdistricts are unnecessary because

political parties make an effort to select candidates who are geographically distributed throughout a district.

Staggering of Terms

The committee reviewed information regarding the procedures for staggering the terms of senators from the 1981 and 1991 redistricting processes. Because members of the House of Representatives also now have four-year terms, the committee also discussed methods for providing for staggering of terms of House members. Options that were discussed by the committee included requiring each member of the Legislative Assembly to run for election after redistricting, requiring members to run if there is a substantial change in population in the new district, and requiring members to run only if more than the required number of incumbents reside in the new district.

Redistricting Commission

The committee reviewed a request to establish an independent redistricting commission. Proponents of a bill draft to establish an independent commission contended that the commission would reduce the partisan nature of the redistricting process.

Opponents of establishing an independent redistricting commission argued that redistricting is the responsibility of the Legislative Assembly. They also contended that such a substantial change in the redistricting process requires further study and discussion.

RECOMMENDATIONS

The committee recommends Senate Bill No. 2456 that establishes 47 legislative districts. The bill repeals the current legislative redistricting plan, requires the Secretary of State to modify 2002 primary election deadlines and procedures if necessary, and provides an effective date of December 7, 2001.

The bill also provides that senators and representatives from odd-numbered districts must be elected in 2002 for four-year terms; senators and representatives from even-numbered districts must be elected in 2004 for four-year terms; senators from even-numbered districts in which there is another incumbent senator as a result of redistricting must be elected in 2002 for two-year terms and senators from odd-numbered districts in which there is another incumbent senator must be elected in 2002 for a four-year term; representatives from even-numbered districts in which there are more than two incumbent representatives must be elected in 2002 for two-year terms and representatives from odd-numbered districts in which there are more than two incumbent representatives must be elected in 2002 for four-year terms; the senator and representatives from the new District 12 must be elected in 2002 for two-year terms; the term of the senator who was elected in District 12 in 2000 and who is in District 23 after redistricting ends on November 30, 2002; and District 46, which will have no incumbent senator as a result of redistricting, must elect a senator in 2002 for a term of two years.

Under a 47-district plan, the ideal district size is 13,664. Under the plan recommended by the committee, the largest district has a population of 14,249 and the smallest district has a population of 13,053. Thus, the largest district is 4.28 percent over the ideal district size and the smallest district is 4.47 percent below the ideal district size, providing for an overall range of 8.75 percent. Maps of the proposed districts are included with this report.

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 are Representatives Rick Berg (Chairman) and Eliot Glasheim, Senators Steven W. Tomac and Rich Wardner, and Public Service Commissioner Tony Clark.

The commission submitted this report to the Legislative Council at the biennial meeting of the Council in November 2002. The Council accepted the report for submission to the 58th Legislative Assembly.

NORTH DAKOTA TELECOMMUNICATIONS LAW

Before 1983 the Public Service Commission regulated telecommunications companies in North Dakota as traditional public utilities. In 1983 the Legislative Assembly removed cooperatives and small telephone companies from the ratemaking jurisdiction of the Public Service Commission. In 1985 the Legislative Assembly expanded this exemption to remove local service of cooperatives and small companies from the Public Service Commission's ratemaking jurisdiction. In 1985 the Legislative Assembly authorized the Public Service Commission 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 a telecommunications company and rural telephone cooperative 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 a mutual aid telecommunications cooperative and telecommunications cooperative association 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 5 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 commission's decision that ordered equal access (intra-LATA) 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 telephones 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 a telecommunications company 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 a telecommunications company 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 Legislative Council's interim 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, which directed a study of 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 expired 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. The Federal Communications Commission allowed suspensions of its rule, however, to rural companies to the extent that is allowed by state law, which was until January 1, 2000.

1999-2000 Interim and 57th Legislative Assembly

During the 1999-2000 interim, the commission reviewed the operation and effect of North Dakota telecommunications law with a particular focus on 1999 Senate Bill No. 2420. The commission received testimony on the creation of an aggregator exception for universities and colleges that provide telecommunications services. An aggregator exception exempts a telecommunications service provider from state and federal laws that are meant to foster competition among resellers and facilities-based carriers. The commission reviewed the federal Telecommunications Act of 1996 and focused on the provisions that related to universal service.

Universal Service

The federal Telecommunications Act of 1996 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. The Act assumes that 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.

Section 254(f) of the Act 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.

The Tenth Circuit Court of Appeals in *Qwest Corporation v. Federal Communications Commission*, 258 F.3d 1191 (July 31, 2001), stated:

We therefore reject Qwest's argument that the FCC alone must support the full costs of universal service. Although § 254(e) requires federal support to be explicit and § 254(k) prevents carriers from using non-competitive services to provide implicit subsidies for competitive services, we see nothing in § 254 requiring the FCC broadly to replace implicit support previously provided by the states with explicit federal support.

Nevertheless, the FCC may not simply assume that the states will act on their own to preserve and advance universal service. It remains obligated to create some inducement--a "carrot" or a "stick," for example, or simply a binding cooperative agreement with the states--for the states to assist in implementing the goals of universal service. For example, the FCC might condition a state's receipt of federal funds upon the development of an adequate state program, an approach the FCC at oral argument conceded was possible. The FCC's fundamental error is in concerning itself only with "enabl[ing] reasonable comparability among states." . . . The FCC wishes to take *credit*

for the states' actions in achieving reasonable comparability, but to do so it must also undertake the *responsibility* to ensure that the states act. On remand, the FCC is required to develop mechanisms to induce adequate state action.

Although many questions arise concerning the creation of a universal service fund, there are four basic questions relating to definitions, contributions, distributions, and administration:

1. Are prices for certain services unaffordable for the average customer requiring a fund subsidy?
2. Who should contribute to the fund?
3. How will it be determined how much each eligible company will receive from the fund?
4. How will the fund be administered?

The commission reviewed programs and services most frequently supported by state universal service funds. The commission received testimony on the principles that should be the basis for a universal service fund. The commission also received testimony on contributions and distributions from a state universal service fund.

The commission considered a bill draft that would have created a state universal service fund similar to Montana's. 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 supported access in high-cost areas to 128,000 baud at rates comparable to urban areas. Any eligible telecommunications carrier, including Qwest, could have received funding; however, nonrural companies would have received funding for high-cost areas without a competitive alternative. The advanced services fund was in addition to the statewide network under development by the Information Technology Department. The advanced services fund in the bill draft addressed the issue of providing reasonable low-cost service to private businesses, which the Information Technology Department's plan did not address, and which was intended to encourage economic development.

The commission made 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. Even though the commission did not recommend any legislation, the 57th Legislative Assembly enacted three bills that primarily affected NDCC Title 49.

House Bill No. 1182

This bill created an aggregator exception for universities. The bill exempted from the provisions of NDCC Chapter 49-21 governing telecommunications, services, or facilities provided by a system or institution of higher

education to institution employees or students at institution facilities or housing owned or leased by the institution; affiliated organizations, including alumni operations and research foundations, formed for the purpose of supporting the institution or leased by the institution and offering products and services intended primarily for the benefit of institution employees, students, or guests; other persons or entities located on property owned or leased by the institution and offering products and services intended primarily for the benefit of institution employees, students, or guests; casual users using the institution's facilities for conferences, seminars, and other similar special events, and broadcasters of athletic events; occupants of technology parks, or business incubators receiving secretarial or business startup supportive facilities owned or leased by the institution during a business startup phase for a term not to exceed four years or until August 1, 2005, whichever is later; and educational, governmental, and nonprofit users of system or institution interactive video conferencing site facilities and associated network services.

House Bill No. 1090

This bill provided that a telecommunications company that elects to be subject to rate and rate of return regulation is not obligated to pay any fee for filing a price schedule or tariff.

House Bill No. 1093

This bill updated the reference to federal rules on "slamming" by requiring telecommunications companies to comply with the provisions of Title 47, Code of Federal Regulations, Part 64, subpart k, in effect on January 1, 2001, regarding changes in a subscriber selection of a provider of telecommunications service.

TESTIMONY AND DISCUSSION

State Universal Service Fund

A state universal service fund can be created for a number of reasons. The commission received testimony on creating a state universal service fund for the purpose of supporting high-cost areas. The commission was informed that a high-cost fund may be necessary if federal universal service funding becomes inadequate. The commission received testimony on creating a state universal service fund to remove implicit subsidies and replace them with explicit subsidies to promote competition.

Although federal universal funds are not inadequate at this time, they could become inadequate upon decisions made by the Federal Communications Commission. The commission was informed the Federal Communications Commission will have a detailed order in the future and if state legislation is required, that order will be the template for any legislation.

The commission was informed that one reason a high-cost fund may be needed is because of a pending Federal Communications Commission decision required by a Tenth Circuit Court of Appeals decision. The court ordered the Federal Communications Commission to

develop "a carrot or a stick" for states to create state universal service funds. Commission members expressed concern that the order may require states to have a state universal fund within one year, and if not, a certain amount of money will be withheld from the federal universal service fund. The commission was informed, however, that the Federal Communications Commission decision will most likely not affect this state. The order will most likely require a review of rates in rural areas to see if they are comparable with urban areas. If the rates are comparable, the state will not be required to create a state universal service fund. It appears the rates in this state are comparable.

The commission received testimony in support of a universal service fund to promote competition in rural areas. Western Wireless argued it cannot compete for basic service in rural areas without a state subsidy because it is not cost-effective. Western Wireless argued it needs universal service funding because its competitor has an unfair advantage of implicit subsidies. Implicit subsidies exist in incumbent rural telephone company rates and the main implicit subsidy is intrastate access charges. Other implicit subsidies include cross-subsidization, including raising business rates to cover the cost of residential service. Wireless companies do not have access to access charges. Nothing obligates long-distance carriers to pay wireless providers access.

Western Wireless proposed a universal service fund that would have removed implicit subsidies and replaced them with explicit subsidies. The explicit subsidies would be portable from company to company and would be based on forward-looking costs.

Western Wireless argued that a universal service fund is not a cost recovery fund and the same dollar amount of subsidy should apply to the incumbent and the competitor for the universal service fund system to be fair.

Western Wireless argued an implicit subsidy reduction fund would provide consumers a choice. Each competitor offers something different in the marketplace and Western Wireless provides mobility and a large calling area. It was argued that choice promotes better services at lower prices.

Commission members discussed whether a universal service fund is for basic services or should be used to support broadband services. It was argued that if the government supports advanced services, it would be supporting one technology over another.

The commission received testimony opposed to a universal service fund to remove implicit subsidies in rural areas. The North Dakota Association of Telephone Cooperatives argued that the Western Wireless plan would result in the government paying for competition.

Cooperatives argued that universal service recovery should be based on actual cost, not forward-looking costs; that the Federal Communications Commission and National Exchange Carrier Association have specifically rejected forward-looking cost models for rural companies; and that a subsidy based on the incumbent's costs for a competitor is nonsensical, e.g., no one would use a competitor's cost to build a highway.

The commission was informed by the cooperatives that an implicit subsidy reduction fund may jeopardize a supplementary fund because of the limited amount of funds available. The federal universal service fund continues to grow in size and the Federal Communications Commission may force states to create a state universal service fund by reducing federal amounts, and the state may not be able to afford anything beyond a supplemental fund.

The opinion was expressed that it is unfair to receive universal service funding without being regulated in the same manner. Cooperatives and wireless companies are not regulated the same. The wireless industry is not regulated by federal law and states are prohibited from regulating the industry. Cooperatives are required to give a choice of long-distance carriers; whereas, Western Wireless could limit the long-distance carrier to itself.

Commission members discussed whether a state universal fund should subsidize wireless providers in rural areas. The view was expressed that rural North Dakota can have good service at a fair price without an implicit subsidy reduction fund. An implicit subsidy reduction fund could result in the state subsidizing the replacement of one carrier with another with no increased competition.

Commission members discussed whether an implicit subsidy reduction fund will result in a market responsive to consumers' needs. It was argued that the cooperatives are responsive without competition because they are owned by their members. The responsiveness of cooperatives is illustrated by the broadband development in the rural areas in response to consumer demands.

Commission members expressed concern that service to rural areas should not be accomplished with a fund that subsidizes rural areas so that customers in rural areas pay less for telephone services than customers in urban areas.

The commission considered two bill drafts, one that would have created a supplemental high-cost universal service fund and one that would have created an implicit subsidy reduction fund. The bill drafts raised a number of issues. The first was identifying those included and those not included in the definitions so who contributes to the fund is clear. Who contributes to the fund is an important issue.

The commission was informed that contributions should be based on total end user intrastate retail revenue. Collection from interstate, intrastate, and international revenue was overturned in Oregon and is being challenged in Texas and North Carolina. If every state implemented an interstate, intrastate, and international tax to support that state's universal service fund, each call would be taxed in two states and by the federal government.

The commission was informed that a state universal service fund should be based on need. It was argued that the Public Service Commission should first determine whether companies need the money before the state creates a universal service fund. If this is not done,

a state universal service fund could provide for overrecovery. The commission was informed that the implicit subsidy removal bill draft states that the cost of support is the difference between a forward-looking cost and the benchmark; however, there is no investigation of costs. The high-cost bill draft provided for incumbent recovery based on embedded costs and not need.

The commission was informed that under the federal program if a rural cooperative customer receives services from the incumbent local exchange carrier and that customer uses a cell phone, both companies receive a federal universal service fund payment. The rural cooperative would receive embedded costs and the wireless company would receive the same amount. In the high-cost fund bill draft, the new carrier would receive an amount based on its own cost. This would be a lower cost than the embedded cost of the incumbent.

The commission received testimony on whether information used for a state universal service fund should be considered trade secrets. Both bill drafts provided that all information is trade secret information, thus not available to the general public.

A state universal service fund could result in an increase in the cost of basic service rates in this state. The commission was informed there are many complaints about the federal \$6 access fee for local service. The state universal service fund would produce another fee on customers' bills that may upset customers. It was suggested that a universal service fund tax would raise the cost to consumers and would create a need for a program for low-income people to cover the cost of the tax.

Performance Assurance Plan

The commission received an update on the Section 271 filing by Qwest. The Federal Communications Commission has to act on the filing by the end of December 2002. On the acceptance by the Federal Communications Commission of Qwest's application, Qwest may enter the long-distance market in its area. As a means of gaining approval, Qwest has entered an agreement called the performance assurance plan. The plan arose from previous Section 271 filings by other regional Bell operating companies. Because the other companies included the plan in their filings and their filings were approved, Qwest has done the same.

The performance assurance plan is a mechanism for ongoing overview of the wholesale marketplace. The plan is a contract between the regional Bell operating company and the competitive local exchange carriers. The plan is part of a contract and is not part of state law. The "fines" collected are contractual payments. The plan provides for payments for failure to compete which go to competitors and the state. The payments that go to the state are to discourage anticompetitive behavior and to repair the harm caused to the competitive marketplace. If the Section 271 filing is approved by December 2002, then the plan would begin and payments could come to the Public Service Commission as soon as January.

The performance assurance plan is very detailed with very particular standards with self-executing fines. Fines are stated for certain bad acts, including not complying with standards for hooking up new customers for a competitor within a certain number of days, billing, collocation within time limits, and basic parity for providing competitors services at the same level Qwest provides services to itself.

The plan does not require much discretion in its administration. The plan is self-executing and fault is generally not an issue. The plan is administered through audits. Qwest has given the Public Service Commission estimates as to the amount of penalties; however, these estimates are trade secret information. The commission was informed that fines will not come into the fund steadily and there will be some need to keep some money from biennium to biennium.

The commission considered a bill draft to provide for the expenditure of funds collected under the performance assurance plan for monitoring the plan. The bill draft created a special fund with a continuing appropriation for two years, of which \$50,000 could be spent without approval by the Budget Section of the Legislative Council. After June 30, 2005, the expiration date of the bill draft, the money would automatically go into the general fund.

The commission received testimony in support of the bill draft. The major expenditure from the special fund would be for an outside auditor to review Qwest's activities in the 14-state region. Other costs would include travel and six-month reviews of the performance assurance plan. The commission was informed that the spending authority should be raised from \$50,000 to \$100,000 because \$100,000 is a closer approximation to the amount the Public Service Commission would have to pay for monitoring the plan.

The commission amended the bill draft to increase the threshold for Budget Section approval from \$50,000 to \$100,000.

Continuation of the Commission

Commission members discussed whether to continue the Regulatory Reform Review Commission. The commission was created to provide overview of the deregulation of the telecommunications industry by

having legislators well versed in telecommunications issues.

The commission reviewed the role of other legislative committees, especially the Information Technology Committee. The commission was informed that the Information Technology Committee meets frequently and has a full agenda.

Commission members discussed whether the commission has served its original purpose. Discussion pointed out that the Public Service Commission could assume the responsibilities of the commission and recommend legislation to the Legislative Assembly.

The commission received testimony in support of continuing the commission because future Federal Communications Commission rulings may affect universal service. Commission members noted that the commission has been extended in the past because of possible Federal Communications Commission rulings and the commission later discovered that no action was required. It was noted that the commission is no longer proactive, but is reactive to the decisions of the Federal Communications Commission. It was also noted that if a need did arise, the Public Service Commission could prepare a bill draft; the Legislative Council could assign a study to a committee, for instance, the Information Technology Committee; or an individual legislator could request the Legislative Council to prepare a bill draft.

Recommendations

The commission recommends House Bill No. 1052 to provide for expenditures of funds collected under the performance assurance plan. The bill is proposed as a means to address a situation in which the Public Service Commission does not know how much money will be collected under the plan. The bill allows the Public Service Commission the ability to spend fines under the plan but requires a review by the Legislative Assembly at the end of the two years. The bill is meant as a window to provide information for the Legislative Assembly to base budgeting decisions.

The commission also recommends House Bill No. 1053 to extend the life of the Regulatory Reform Review Commission to 2005. The reason for the extension is to provide an avenue to react to potential universal service fund issues.

TAXATION COMMITTEE

The Taxation Committee was assigned four studies. House Bill No. 1206 directed a study of special assessments and property tax assessment and abatements, to include valuation of subsidized housing and the homestead tax credit for senior citizens. Senate Bill No. 2448 directed a study of compliance and jurisdictional issues under the tobacco, alcohol, and fuels tax laws. House Concurrent Resolution No. 3047 directed a study of the property tax assessment and valuation of agricultural property. Senate Concurrent Resolution No. 4031 directed a study of the state corporate income tax laws.

Committee members were Senators Rich Wardner (Chairman), Dwight Cook, Kenneth Kroeplin, Ronald Nichols, Randy A. Schobinger, Ben Tollefson, and Herb Urlacher and Representatives Michael Brandenburg, Al Carlson, Byron Clark, David Drovdal, Michael Grosz, Gil Herbel, Frank Klein, Joe Kroeber, Edward H. Lloyd, Eugene Nicholas, Kenton Onstad, Dennis J. Renner, Earl Rennerfeldt, Dan Ruby, Arlo E. Schmidt, and Ray H. Wikenheiser.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2002. The Council accepted the report for submission to the 58th Legislative Assembly.

PROPERTY TAX ASSESSMENT STUDY

The committee treated the study directed by House Bill No. 1206 as separate studies of property tax assessments and abatements and improvements by special assessment. Within the study of property tax assessment and abatements, the committee addressed issues of valuation of subsidized housing and the homestead tax credit.

Background

Property Tax Liability Determination and Payment

Property tax liability is determined by multiplying taxing districts' combined mill rates times the taxable value of the property. Issues often arise regarding the determination of the mill rate, taxable value, and tax status for the property.

Property taxes are collected by the county and distributed among taxing districts according to their interests in the revenues. Property taxes are due January 1 following the year of assessment and are payable without penalty until March 1 of the year they are due. If property taxes are paid in full by February 15, the taxpayer is entitled to a 5 percent discount. Penalties begin to accrue if property taxes are not paid by March 1. Taxpayers have the option of paying property taxes in installments.

Determination of Mill Rate

The mill rate for a taxing district is established through the budget process. Final budgets of taxing districts must be submitted to the county auditor by October 10. The county auditor prepares tax lists, which must be delivered to the county treasurer by

December 10, and tax statements must be mailed to property owners by December 26.

The amount budgeted by a taxing district may not result in a tax levy exceeding levy limitations established by statute. Statutory limitations of a certain number of mills per dollar of taxable valuation have been imposed for most property tax levies by political subdivisions. Since 1981 the Legislative Assembly has provided optional authority to levy taxes with a maximum amount determined by comparison with a base year levy amount in dollars. Most taxing districts in the state use this optional method of determining the maximum levy to which they are entitled. From 1981 through 1996, percentage increases were allowed by law over the base year levy in dollars. The compounding of these increases allowed taxing districts to increase levies well beyond the amount they would be able to levy under mill levy limitations. For taxable years after 1996, taxing districts may use the optional method to levy up to the amount levied in dollars in the base year without a percentage increase.

To determine the mill rate for a taxing district, the county auditor determines whether the amount levied is within statutory levy limitations and, if it is, the county auditor divides the total property taxes to be collected for the taxing district by the taxing district's total taxable valuation. This generates a percentage that is the mill rate for the district.

Assessment

Real property must be assessed with reference to its value on February 1 of each year. All property must be valued at true and full value which is defined as the value determined by considering any earning capacity, the market value, and all other matters that affect the actual value of the property. For agricultural property, this value is determined by operation of a productivity formula based on the capitalized average annual gross return of the land.

The assessed value of property is 50 percent of the true and full value of the property. Taxable valuation is a percentage of assessed valuation, which is 9 percent for residential and 10 percent for agricultural, commercial, and centrally assessed property. The taxable valuation is the amount against which the mill rate for the taxing district is applied to determine the tax liability for individual parcels of property.

Property of railroads, public utilities, and airlines is assessed by the State Board of Equalization as required by Article X, Section 4, of the Constitution of North Dakota. The owner of centrally assessed property must file an annual report with the Tax Commissioner by May 1. The Tax Commissioner prepares a tentative assessment for the property by July 15. Notice of the tentative assessment is sent to the property owner at least 10 days before the State Board of Equalization meeting, which is held on the first Tuesday in August to finalize assessments.

Equalization and Abatement

Equalization is the process provided by law to adjust property assessments to be consistent with market value or agricultural value. Property owners who are dissatisfied with assessment levels may appeal assessments through the township board of equalization or the city board of equalization in April, the county board of equalization in June, and the State Board of Equalization in August.

As an alternative to the equalization process, a taxpayer may pursue the abatement process by filing an application for abatement and refund of taxes. Several levels of review may be involved in the abatement process, which may culminate in appeal of the decision of the board of county commissioners to the district court and then to the North Dakota Supreme Court. Several statutory grounds exist for granting an abatement, including that the assessment is invalid, inequitable, or unjust.

Homestead Property Tax Credit

Since 1969 North Dakota law has provided a property tax reduction for persons 65 years of age or older with limited income. As created in 1969, the provision allowed a person 65 years of age or older with an income of \$3,000 or less per year from all sources to claim a 50 percent reduction in the assessment on the person's homestead up to a maximum reduction of \$1,000 of assessed valuation. This provision has been amended by 23 bills since 1969.

The income limitations in North Dakota Century Code (NDCC) Section 57-02-08.1 have been increased by legislation approved in 1973, 1975, 1977, 1979, 1981, 1985, 1989, 1993, and 1999. Other significant changes to this section include adding a matching credit and refund for renters in 1973, state reimbursement to political subdivisions of property tax revenue losses from the credit in 1975, extending the credit in 1975 to a person who is permanently and totally disabled, adding a deduction from income for medical expenses in 1977, changing the basis of the tax credit from assessed valuation to taxable valuation and proportionately reducing the amount of reductions allowed in 1983, adding an exclusion in 1983 to disallow the credit to a person whose assets exceed \$50,000 not including the value of the homestead, excluding federal rent subsidies from income and excluding tax-exempt property from eligibility for the credit for renters in 1985, imposing a \$6,000 limit on the credit allowed against special assessments in 1985, allowing the credit to remain available upon absence of the person from the homestead for nursing home care or care in a similar facility in 1989, and creating a definition for permanent and total disability in 1993.

Under NDCC Section 57-02-08.1, a person who is 65 years of age or older or permanently and totally disabled and whose income is \$14,000 or less per year from all sources is entitled to a reduction in taxable valuation of the person's homestead. The exemption continues to apply if the person does not reside in the homestead and the person's absence is due to confinement in a nursing home, hospital, or other care facility for

as long as the portion of the homestead previously occupied by the person is not rented to another person. The reduction in taxable valuation varies depending upon income as follows:

Income	Maximum Reduction in Taxable Valuation	Maximum Percentage Reduction in Valuation
\$8,000 or less	\$2,000	100%
\$8,001 to \$9,500	\$1,600	80%
\$9,501 to \$11,000	\$1,200	60%
\$11,001 to \$12,500	\$800	40%
\$12,501 to \$14,000	\$400	20%
Over \$14,000	\$0	0%

A person claiming the homestead property tax credit exemption must sign a statement that the person is 65 years of age or older or permanently and totally disabled, the person's income does not exceed \$14,000 per annum, and the value of the person's assets, excluding the value of the person's homestead, does not exceed \$50,000, including the value of any assets divested within the last three years.

An illustration of the effect of the homestead property tax credit may be useful in understanding how the credit applies. For the following examples, a home with a \$60,000 true and full value is assumed for each homeowner, and the 1999 statewide average mill rate of 394 mills is applied to the property:

	Annual Income	Taxable Valuation Reduction	Property Tax Obligation	Property Tax Savings
Homeowner A	\$7,500	\$2,000	\$276	\$788
Homeowner B	\$10,000	\$1,200	\$591	\$473
Homeowner C	\$13,500	\$400	\$906	\$158
Homeowner D	\$15,000	\$0	\$1,064	\$0

For homeowners in the following examples, the same assumptions are used except the true and full value of the home is reduced to \$30,000. In these examples, Homeowner E is eligible for complete elimination of the property's taxable valuation. Homeowners F and G are limited in the reduction they receive because the maximum percentage reduction in valuation applies to them rather than the maximum dollar amount reduction under NDCC Section 57-02-08.1.

	Annual Income	Taxable Valuation Reduction	Property Tax Obligation	Property Tax Savings
Homeowner E	\$7,500	\$1,350	\$0	\$532
Homeowner F	\$10,000	\$810	\$213	\$319
Homeowner G	\$13,500	\$270	\$426	\$106
Homeowner H	\$15,000	\$0	\$532	\$0

Homestead Property Tax Credit for Renters

Any person 65 years of age or older or permanently and totally disabled and whose income of \$14,000 or less per year from all sources and who rents living quarters is eligible for a refund of a portion of the person's rent deemed to constitute payment of property taxes. Twenty percent of the person's annual rent, excluding federal rent subsidy and utilities, services, furniture, furnishings, or appliances furnished by the landlord

under the rental agreement, is considered payment made for property taxes. This 20 percent of annual rent, to the extent it exceeds four percent of the annual income of the person, is refunded from the state general fund, but the refund may not exceed \$240. A husband and wife who are living together are entitled to only one rent refund. The refund is not available for living quarters, including a nursing home, that is exempt from property taxes.

State Reimbursement of Homestead Property Tax Credits

Under NDCC Section 57-02-08.2, since 1975 the state has provided reimbursement to political subdivisions for property taxes lost as a result of the homestead property tax credit, and the state has also provided refunds to eligible renters under the homestead property tax credit. Each county is required to certify to the Tax Commissioner the name and address of each person allowed the homestead property tax credit for the previous year, the amount of the exemption, and the total of tax mill rates against the property. The Tax Commissioner is required to certify to the State Treasurer for payment to each county the amount of property tax excused under the homestead property tax credit.

Renters entitled to a refund must apply annually to the Tax Commissioner for refunds.

The following table shows appropriations made for state reimbursement to political subdivisions and payments to renters for the homestead property tax credit for each biennium since the state began providing reimbursement:

1975-77	\$3,286,014
1977-79	\$2,900,000
1979-81	\$3,550,000
1981-83	\$6,290,000
1983-85	\$5,341,000
1985-87	\$4,250,000 ¹
1987-89	\$4,706,000 ²
1989-91	\$5,000,000
1991-93	\$4,879,163
1993-95	\$5,375,000
1995-97	\$5,181,250
1997-99	\$4,790,813
1999-2001	\$4,540,813
2001-03	\$4,540,813

¹ After \$750,000 reduction by the 1987 Legislative Assembly.
² After \$456,000 deficiency appropriation added by the 1989 Legislative Assembly.

The following table shows the number of claimants, total payments, and average payments per claimant under the homestead property tax credit:

Tax Year	Qualifying Homeowners	Paid for Homeowners	Average Per Homeowner	Qualifying Renters	Paid to Renters	Average Per Renter	Total Payments
1975*	6,004	\$650,693	\$108	414	\$26,182	\$63	\$676,875
1976	6,738	\$691,592	\$103	508	\$37,367	\$74	\$728,959
1977*	9,663	\$1,351,324	\$140	1,325	\$143,352	\$108	\$1,494,676
1978	10,736	\$1,556,881	\$145	2,301	\$292,458	\$127	\$1,849,339
1979*	10,529	\$1,582,655	\$150	2,572	\$353,058	\$137	\$1,935,713
1980	10,633	\$1,881,602	\$177	2,594	\$365,696	\$141	\$2,247,298
1981*	10,158	\$1,970,208	\$194	2,635	\$387,906	\$147	\$2,358,114
1982	9,411	\$1,886,433	\$200	2,664	\$414,429	\$156	\$2,300,862
1983	8,820	\$1,841,081	\$209	3,133	\$516,244	\$165	\$2,357,325
1984	8,206	\$1,818,526	\$222	3,068	\$519,667	\$169	\$2,338,193
1985*	7,362	\$1,697,678	\$231	2,206	\$159,713	\$72	\$1,857,391
1986	7,567	\$1,987,970	\$263	1,994	\$161,905	\$81	\$2,149,875
1987	7,540	\$2,011,933	\$267	1,878	\$163,092	\$87	\$2,175,025
1988	7,546	\$2,142,139	\$284	1,881	\$163,357	\$87	\$2,305,496
1989	7,307	\$2,158,650	\$295	1,657	\$149,666	\$90	\$2,308,316
1990*	7,188	\$2,336,992	\$325	1,601	\$149,705	\$94	\$2,486,697
1991	7,029	\$2,230,637	\$317	1,582	\$151,600	\$96	\$2,382,237
1992	6,743	\$2,181,292	\$323	1,534	\$155,205	\$101	\$2,336,497
1993	6,576	\$2,184,714	\$332	1,563	\$166,739	\$107	\$2,351,453
1994	6,376	\$2,159,466	\$339	1,626	\$175,554	\$108	\$2,335,020
1995*	6,095	\$2,194,689	\$360	1,590	\$177,782	\$112	\$2,372,471
1996	5,680	\$2,072,141	\$365	1,499	\$166,841	\$111	\$2,238,982
1997	5,278	\$1,974,283	\$374	1,482	\$165,060	\$111	\$2,139,343
1998	4,943	\$1,852,124	\$375	1,454	\$173,370	\$119	\$2,025,494
1999	4,457	\$1,817,552	\$408	1,508	\$190,211	\$126	\$2,007,763

*Denotes years in which income limitations for credits were increased. The 1990 increase was approved in 1989 legislation, the 1995 increase was approved in 1993 legislation, and an increase for 2000 was approved in 1999 legislation.

Homestead Credit for Special Assessments

Under NDCC Section 57-02-08.3, a person who is qualified for the homestead property tax credit may also elect to qualify for a homestead credit against special assessments. The credit is available only for annual installments of special assessments and must be claimed each year the applicant wants the credit. The total amount of credits allowed for any parcel of property may not exceed \$6,000, not including interest charged

by the governing body levying the special assessment. The amounts claimed are to be reported by the county to the Tax Commissioner for payment to the special assessment district.

The amount of the homestead credit for special assessments, plus interest of 9 percent per year, is a lien in favor of the state against the property upon which the special assessment credit is allowed. The lien is generally payable from the estate of the claimant, and title to

the homestead may not be transferred without the lien being satisfied, except in the case of a transfer between spouses because of the death of one of them, in which case the lien need not be satisfied until the property is again transferred.

Subsidized Housing Valuation

The three basic approaches to valuation of property are the income approach, cost or replacement approach, and sales comparison or market approach. Senate Bill No. 2348, which failed to pass in 2001, would have required valuation of subsidized housing by the income approach and consideration of only actual rental income and expenses. The legislation was supported by developers of low-income housing under Section 42 of the Internal Revenue Code.

Under Section 42 of the Internal Revenue Code, a developer is eligible for an income tax credit for developing qualifying low-income rental property. The credit may be sold to investors to raise money to make financing a project feasible. For 30 years, rent limitations and tenants' income limitations apply to the rental units. The North Dakota Housing Finance Agency selects and monitors buildings under the tax credit program. Different tenant income and rental unit rent restrictions are established by the Department of Housing and Urban Development for each county.

Committee Consideration

Assessment Issues

The committee reviewed the effect of special assessments on the assessed valuation of the property. The Property Tax Division of the State Tax Department has taken the position that the amount of special assessments should be added to the true and full value of property because special assessment projects are improvements to property.

The committee reviewed use of the sales ratio study in smaller communities. The sales ratio study is intended to improve assessment quality by comparing sales prices to true and full valuation. A minimum sample of 30 sales each for residential and commercial property is required for use of the sales ratio study in each county and major city. If the number of sales in the year does not meet the minimum sample size, data must be supplemented with sales from three prior years or the current year appraisals. For communities in which property sales are infrequent or there are no purchasers for property, the sales ratio study is a reference, but valuations should reflect local conditions.

Property tax burden has shifted from agricultural property to residential property from 1990 to 2000. During this period, there have been increases in property taxes levied on all classes of property. From 1990 to 2000, agricultural property declined from 43 to 38 percent of property valuation and from 34 to 29 percent of total property taxes. In that period, residential property increased from 29 to 35 percent of property valuation and from 34 to 41 percent of total property taxes. Commercial property and centrally assessed

property remained fairly constant in their shares of valuation and taxes levied from 1990 to 2000.

The committee reviewed when fee hunting or similar use would cause agricultural property to lose its agricultural tax status. If the primary use of property is for hunting or some other nonfarming activity, the property should be classified as commercial property. If farming is the primary or dominant use of property and commercial hunting or other activity on the property is incidental, the property does not lose its status as agricultural property.

Homestead Property Tax Credit

Income limits under the homestead credit law have been increased in recent years, but the maximum reduction against property values has not been changed. Homeowners who previously received complete exemption of their property may now be subject to taxes on part of the value of the property because the maximum reduction has not kept pace with property valuations. The existing maximum reduction eliminates taxes on about \$44,000 of true and full value, which covered most eligible property at the time the exemption was created. Other weaknesses noted by the committee under the homestead property tax credit are that income limitations do not respond to changing economic conditions and the same income limit applies to a single person and a married couple.

Subsidized Housing Valuation

The committee was asked to recommend legislation to provide for uniform valuation of Section 42 properties across the state. The committee considered legislation enacted in Iowa and noted there were resulting problems in valuation of similar properties. An approach was recommended to provide a partial property tax exemption for housing that qualifies for the Section 42 credit. The committee considered an approach to value these properties under normal assessment procedures and subtraction from the true and full value of components of the value to the renter of having rent restrictions and the value of the income tax credit under Section 42. The committee was urged not to recommend the bill draft for property tax exemption of subsidized housing. Developers of property under Section 42 receive an upfront subsidy under federal tax law and providing a property tax break for these properties was characterized as an additional competitive advantage for these developers, with whom private developers compete in the housing market. The state supervisor of assessments said proper assessment of subsidized housing should recognize limitations on valuation, using either the income approach or the market approach. Committee members noted other types of subsidized housing programs would not be provided special valuation under the approach considered. The committee makes no recommendation with respect to a partial property tax exemption for subsidized housing.

Recommendation

The committee recommends House Bill No. 1054 to revise eligibility for the homestead property tax credit. The bill establishes income limits in five income categories. If an eligible person's income does not exceed the federal poverty level, the person is entitled to a reduction of 100 percent of taxable valuation of the person's homestead, with a maximum reduction of \$80,000 in true and full valuation. Based on February 2002 guidelines from the United States Department of Health and Human Services, the federal poverty level was \$8,860 for a single person and \$11,940 for a couple. Income up to 110 percent of the federal poverty level would entitle the claimant to an 80 percent reduction of the taxable valuation of the homestead, with a maximum reduction of \$64,000 in true and full valuation. The 110 percent limit is equivalent to \$9,746 for a single person and \$13,134 for a couple. Income not exceeding 120 percent of the federal poverty level would entitle the claimant to a 60 percent reduction of the taxable valuation of the homestead, with a maximum reduction of \$48,000 in true and full valuation. The 120 percent limit is equivalent to \$10,632 for a single person and \$14,328 for a married couple. Income not exceeding 130 percent of the federal poverty level would entitle the claimant to a 40 percent reduction of the taxable valuation of the homestead with a maximum reduction of \$32,000 in true and full valuation. The 130 percent limit is equivalent to \$11,518 for a single person and \$15,522 for a couple. The highest income category of eligibility in the bill is 140 percent of the federal poverty level, which would entitle the claimant to a reduction of 20 percent of the taxable valuation of the homestead, with a maximum reduction of \$16,000 in true and full valuation. The equivalent income at the 140 percent limit is \$12,404 for a single person and \$16,716 for a couple. Current law limits the credit to claimants with income of \$14,000 or less, so the bill would reduce the income limitation for a single person and increase the income limitation for a couple. The bill provides that for renters the maximum \$240 rent refund per year would remain available, but the same income categories are applied by the bill for the homestead credit based on the federal poverty level. The state reimburses political subdivisions for property tax revenues not received because of the homestead credit, so the bill would have a fiscal effect to the state. The estimated fiscal effect to the state of the bill would be an additional \$1,362,244 per biennium, which would be added to the current state cost per biennium of \$4,540,813.

SPECIAL ASSESSMENTS STUDY

Background

Under North Dakota law, cities have had authority to levy special assessments for improvements since 1897, counties have had that authority since 1983, and townships were given that authority in 2001.

Eight chapters of the North Dakota Century Code govern improvements by special assessment in cities. County authority for improvements by special

assessments is based on a reference to city provisions. Township special assessment levy authority is governed by an abbreviated statutory procedure provided under NDCC Chapter 58-18. Special assessments for city projects are the most common and were the primary focus of the study.

An improvement district must be created by ordinance or resolution as a jurisdictional prerequisite before a public improvement to be paid for by special assessments may be undertaken. There is no statutory provision for initiation of improvements by special assessment by petition but it appears that special assessment districts are almost universally initiated by petition of property owners. After a petition is received or the governing body decides to proceed, the city generally schedules an informal meeting with property owners or notifies them by mail that a project will be considered. The size and the form of a special assessment district is decided by the city governing body after consultation with the city engineer.

A city may create a water district, sewer district, water and sewer district, street improvement district, boulevard improvement district, flood protection district, or parking district. After a district is created, the city governing body must direct the city engineer to prepare a report as to the nature, purpose, and feasibility of the improvement, an estimate of the probable cost of the project, and detailed plans and specifications for construction.

After filing and approval of the city engineer's report, the city governing body may adopt a resolution declaring the necessity of the improvements. A resolution of necessity is not required if the improvement is a water or sewer improvement, service charges will pay for the improvement, or a petition signed by owners of a majority of the area of property included within the district has been received. The resolution must be published once each week for two consecutive weeks in the official newspaper of the city. Within 30 days after the first publication of the resolution of necessity, owners of property in the proposed improvement district may file written protests. If protests are received from owners of a majority of the area of property within the improvement district, the protest is a bar against the improvement project. If protests are received from owners of a majority of any separate property area within the district, the protest is a bar against the portion of the improvement to be assessed in whole or in part upon property within that area.

If sufficient protests are not filed and the resolution of necessity is adopted, the city governing body must advertise for bids on a project. The governing body must award a contract for construction of a public improvement to the lowest responsible bidder. The governing body may reject any bid and readvertise for proposals if no bid is satisfactory. If a contract for construction of a public improvement is estimated to exceed \$100,000, plans, drawings, and specifications must be procured from a licensed architect or registered professional engineer. Before acceptance of any bid, the governing body must require the city engineer to reestimate the cost of the work under the bids. The governing body may not

award the contract if the city engineer's estimate of work under the bids exceeds the engineer's original estimate by 40 percent or more.

A special assessment commission of three appointed city residents must determine the amount each parcel of property will be especially benefited and assess against each parcel the amount necessary to pay its just proportion of the total cost. Benefits are assessed against property on a per square foot basis or on a linear foot of frontage basis. Property of political subdivisions is not exempt from special assessments.

A complete list of assessments must be prepared showing each parcel benefited by the improvement and the amount assessed against it. The assessment list must be published in the official city newspaper once each week for two consecutive weeks and include a notice of the time and place to hear objections to assessments. At the hearing, the special assessment commission or the city auditor may make alterations in assessments. Any person still aggrieved after the hearing may file a written notice of appeal with the city governing body.

A special assessment is a lien against the property on which it is levied. Special assessments may be paid by a property owner without interest within 10 days after they have been approved by the city governing body. After 10 days, interest accrues on special assessments at an annual rate not exceeding one and one-half percentage points above the average net annual interest rate on any warrants or bonds for which they are pledged. Special assessments are generally payable in annual installments, which for most projects may be extended for up to 30 years. Annual installments of assessments must be certified by the city auditor to the county auditor for collection with property tax collections.

For a defined area outside the limits of any incorporated city, the board of county commissioners may levy special assessments for improvements. Initiation of a special assessment district by a county may be by receipt of a petition of 60 percent of the landowners in the defined area or by resolution of the board of county commissioners. A county is given all the statutory authority and duties with regard to special assessments which belong to cities.

A board of township supervisors may create an improvement district upon petition of 60 percent of the freeholders in a proposed improvement district. Each improvement district must be of a size and form to include all properties the township board of supervisors believes will be benefited by the improvement project.

Committee Consideration

Committee members expressed concern whether adequate notice of special assessment projects is provided to property owners. One concern is that current law does not require property owners to be informed of the estimated special assessment amounts against their property at the time they have an opportunity to protest a project. Another concern is that current law requires newspaper publication of notice of special assessment projects but does not require notice by mail

to affected property owners. The committee considered and received testimony relating to a bill draft that would have required inclusion of estimated assessments against property in the resolution of necessity for a special assessment project. Representatives of the North Dakota League of Cities opposed the bill draft, saying that this requirement would add substantial costs to special assessment projects and that actual costs of projects are not known until completion of a project in most cases. The committee makes no recommendation with respect to the bill draft.

Committee members expressed concern that city-wide special assessment projects do not require voter approval. The committee considered and received testimony on a bill draft that would have required voter approval of special assessment improvements in a city of 5,000 or more population if the improvement district contains 75 percent or more of the area of property within the city. The bill draft would have required voter approval after the opportunity to protest a project has passed and before the project is let for bids. Representatives of the North Dakota League of Cities said there may be some problems with the bill draft approach, including the fact that park districts may impose special assessments for certain projects and must do so on a citywide basis but do not have authority to call an election. The committee makes no recommendation with respect to the bill draft.

Committee members expressed concern about the amount of expenses that may be added to special assessment improvement projects. The committee considered a bill draft that would have provided that expenses added to a special assessment improvement project may not exceed the actual expenses for engineering and attorneys' fees, publication, and other administrative expenses. City officials reviewed the fees added to construction costs in special assessment projects. Estimated fees are added to special assessment projects and although fees vary on individual projects, estimated fees prove to be quite accurate over time and a variety of projects. City officials opposed the bill draft on the grounds that actual costs and fees on projects may not be known until long after the assessments must be spread against property and in some cases it may never be possible to determine actual costs and fees. It was also suggested that determination of special assessment costs and fees is a local issue and should be left to local decisionmakers. The committee makes no recommendation with respect to the bill draft.

The committee reviewed city flood control special assessments applied in Grand Forks. State property in Grand Forks is exempt from flood control special assessments under NDCC Section 40-23-22.1 in recognition of state financial assistance for flood control provided to Grand Forks. Grand Forks city officials requested authority to impose city flood control special assessments against private commercial structures on state land and University of North Dakota officials stated that they would not object to this approach if it is carefully structured to not impact existing facilities.

Recommendation

The committee recommends Senate Bill No. 2052 to allow imposition of city flood control special assessments against private commercial structures on state land. The bill is intended to allow flood control special assessments against a hotel and another commercial venture to be located on University of North Dakota property. The bill would not allow assessments against a structure if the net profit is dedicated to the state institution, which is intended to exempt the Engelstad Arena at the University of North Dakota from assessments.

The committee recommends Senate Bill No. 2053 to provide for uniform use of phrases in special assessment provisions relating to "probable cost of the work" and "probable cost of the improvement." The bill provides that cost of the work refers to construction costs. The cost of the improvement refers to all special assessment project costs, including cost of the work plus costs of extra work, fees, publication, and other associated expenses.

COMPLIANCE AND JURISDICTION UNDER TOBACCO, ALCOHOL, AND FUELS TAX LAWS STUDY

Background

Legislation was considered and defeated in 2001 (Senate Bill No. 2448) which would have reinstated the use of tax stamps on cigarette packages, as was required by law from 1925 until 1991. Since 1991 distributors have been required to remit taxes monthly on all taxable sales of cigarettes, but stamps on packages have not been required. The bill was introduced because of concerns that evasion of the state tobacco tax might be the cause of recent substantial declines in tobacco tax revenues. A substantial amount of opposing testimony was received on the issue of reinstating tax stamps. The bill was amended to provide for a Legislative Council study and alcohol and fuels taxes were added to the study subjects. Tobacco, alcohol, and fuels taxes are collected at the wholesale level.

A state tax of 44 cents per package of cigarettes is imposed at wholesale. Cigars and pipe tobacco are taxed at 28 percent of wholesale purchase price. Snuff is taxed at 60 cents per ounce and chewing tobacco is taxed at 16 cents per ounce. Because the state lacks tax jurisdiction on Indian reservations under federal law and court decisions, sales by a distributor to enrolled tribal members are not subject to state taxes.

A motor vehicle fuels tax and a special fuels tax of 21 cents per gallon is imposed on fuels sold to retailers or directly to consumers. Special fuel that is dyed for federal fuel tax exemption purposes and sold for use as heating fuel or for an agricultural, industrial, or railroad purpose is exempt from the 21 cents per gallon tax but is subject to a special excise tax of 2 percent of the purchase price. Dyed fuel may not be used in a licensed motor vehicle.

Alcoholic beverage taxes are imposed at the wholesale level. Taxes are imposed on a per gallon basis ranging from eight cents per gallon for beer in bulk

containers to \$4.05 per gallon for alcohol. Effective July 1, 2001, alcoholic beverage tax collection responsibilities were transferred from the State Treasurer to the Tax Commissioner.

Tribes have authority to impose taxes on reservations in this state. Collection of tribal taxes by the state is allowed if a tribal-state tax collection agreement is executed and previously approved by the Governor. Agreements are in place with the Standing Rock Sioux Tribe in which the Tax Commissioner acts as an agent of the tribe for collection of tribal cigarette and tobacco taxes and fuels taxes.

Committee Consideration

The Tax Department reported a high level of compliance under the tobacco tax laws. In response to concerns about tax-free cigarettes being purchased on Indian reservations and resold at retail outside the reservations without payment of taxes, the Tax Department conducted over 120 field reviews of businesses located outside Indian reservations in the state and found no evidence of illegal sale of untaxed tobacco products. A nonmember of a tribe is entitled to have in possession one carton of untaxed cigarettes under state law. It appears reductions in tax revenues are substantially attributable to legal purchases and possession of untaxed cigarettes and tobacco products on Indian reservations by nonmembers of tribes.

The Tax Department reported a high level of compliance with the dyed fuels provisions of state law. The Internal Revenue Service checked vehicles in North Dakota and Minnesota and found minimal violations on either side of the border. The Tax Department reported that special fuels dealers have been doing an excellent job in attempting to make sure they are selling dyed fuels for use in nonlicensed vehicles only.

The North Dakota Highway Patrol is responsible for enforcement of the law prohibiting use of dyed fuels in licensed vehicles. An officer will request a fuel sample from a vehicle when the officer has reasonable suspicion to believe the vehicle is using dyed fuel or as part of an investigation following information received of an alleged violation. Highway Patrol enforcement of the dyed fuels law is subject to constitutional limitations on search and seizure, which the Highway Patrol understands to mean that roadblocks similar to sobriety checkpoints may not be used to collect fuel samples to check for the presence of dyed fuels.

During the interim, the Wahpeton-Sisseton Sioux Tribe began ownership and operation of a fuel-blending facility that purchases fuel from out-of-state sources and sells fuel at wholesale to a retail facility also owned and operated by the tribe. Because the wholesale and retail operation are owned by the tribe, sales of fuel are not subject to state taxes. Retail prices of gasoline at the retail outlet were substantially less than the prices of other retailers in the region.

The Tax Department reviewed the jurisdictional issues involved in tribal fuel sales and state tax authority. North Dakota is one of eight states that have entered

fuels tax agreements with tribes. The Standing Rock Sioux tribe and the Tax Commissioner have entered a state-tribal tax collection agreement for motor fuels taxes and other tribes in North Dakota have inquired about the possibility of entering similar fuels tax agreements with the state. In 2001 the Idaho Supreme Court decided that Idaho could not levy its motor fuels tax on fuel sold to an Indian tribe on its reservation and federal law does not authorize a state levy on those fuels. This decision has been appealed to the United States Supreme Court and the outcome may dictate the future of state and tribal motor fuels tax authority on reservations.

The objectives of state-tribal fuels tax agreements are to provide a method for the tribes to gain tax revenue, allow the state to share revenue, allow the state to protect non-Indian fuel dealers from a competitive disadvantage caused by a difference in tax rates, and allow the tribes and the state to avoid the cost of expensive litigation. There appears to be no advantage for the state to enter a tax collection agreement with a tribe if the state and tribal fuels tax rates are not the same. If the rates are not the same, some taxpayers will be at a competitive disadvantage.

A Tax Department representative said the 2001 transfer of alcohol tax collection responsibilities from the State Treasurer to the State Tax Commissioner has gone smoothly. Cooperation from the beverage industry and the office of the State Treasurer have assisted in the transition. The Tax Department reported no problems with compliance and jurisdiction issues under the alcohol tax.

Conclusion

The committee makes no recommendation with respect to the tobacco, alcohol, and fuels tax compliance and jurisdiction study.

CORPORATE INCOME TAX STUDY

Background

Tax Rates History

Corporate income taxes were first imposed in North Dakota in 1919, with the imposition of a flat rate tax of 3 percent on total net income of corporations. The 1919 legislation also imposed an additional tax of 5 percent on total net income of corporations received during a calendar or fiscal year and remaining undistributed six months after the end of that year.

In 1923 the corporate income tax was imposed at a flat rate of 3 percent of net income taxable to this state, and provisions were added for allocation of income to the state. The 5 percent additional tax on undistributed income was eliminated.

In 1937 a graduated corporate income tax rate structure was created. The highest rate, 6 percent, was applied to corporate income exceeding \$15,000 per year.

In 1978 an initiated measure was approved by the voters to add a rate of 8.5 percent for corporate taxable income exceeding \$25,000.

In 1981 the highest corporate income tax rate was reduced to 7 percent and applied to income exceeding \$50,000 per year.

In 1983 corporate income tax rates were increased by 50 percent. After the 1983 changes, which are still in effect, North Dakota corporate income tax rates are:

Taxable Income	Taxable Rate
\$3,000 or less	3.0%
Over \$3,000 but not over \$8,000	4.5%
Over \$8,000 but not over \$20,000	6.0%
Over \$20,000 but not over \$30,000	7.5%
Over \$30,000 but not over \$50,000	9.0%
Over \$50,000	10.5%

Exempt Corporations

An insurance company paying the insurance premiums tax is exempt from the corporate income tax. Insurance company earnings from business activities not subject to insurance premiums taxes are subject to corporate income taxes.

Financial institutions paying a financial institutions tax are exempt from corporate income taxes. Financial institutions pay a tax of 7 percent of taxable income.

Any organization exempt from the federal income tax is exempt from state income taxes. A substantial number of corporations, including several kinds of nonprofit corporations, are exempt from federal income taxes under the Internal Revenue Code. The most common basis for invoking tax-exempt status is an exemption for organizations operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes or to foster national or international sports competition or prevent cruelty to children or animals. Other Internal Revenue Code provisions provide exemptions for civic leagues or social welfare organizations; labor, agricultural, or horticultural organizations; business leagues, chambers of commerce, real estate boards, and boards of trade; social clubs; credit unions; farmers' cooperatives; political parties; homeowners' associations; fraternal benefit societies; cemetery companies; local life insurance associations; mutual irrigation companies; or mutual or cooperative telephone companies or similar organizations; certain insurance companies; certain United States instrumentalities; teachers' local retirement fund associations; certain fraternal organizations; farmers' cooperative associations; certain veterans' organizations; qualified state tuition programs; and certain other special purpose corporations.

Taxable Income of Corporations

The starting point for determination of North Dakota corporate income taxes is a corporation's federal taxable income. Corporate taxable income can be an extremely complicated calculation but simply stated consists of gross income minus deductions. Federal gross income includes gross profit, determined by totaling gross sales and gross receipts from services minus the cost of goods sold; receipts from dividends, interest, rents, and

royalties; net gain on sales or exchanges; and other income. Deductible expenses include salaries and wages of officers and employees, repairs, bad debts, rents, taxes, interest expenses, losses on sales or exchanges, contributions, amortization, depreciation, depletion, advertising, pension and profit-sharing, employee benefits, casualty losses, research and experimental costs, and certain other special deductions.

The North Dakota corporate income tax applies to the portion of a corporation's taxable income that is derived from sources within North Dakota. A corporation that conducts business only within North Dakota uses its federal taxable income as its North Dakota taxable income. A corporation that conducts business inside and outside North Dakota must apportion its federal taxable income to determine the portion that is attributable to sources within North Dakota. The apportionment factor is a percentage that is the average of North Dakota property, payroll, and sales compared to the corporation's total property, payroll, and sales.

Unitary Business Reporting

A corporation that is part of a unitary business involving one or more corporations, including consideration of operations outside the United States, must file using the combined reporting method. A "unitary business" is a group of corporations carrying on activities that transfer value among themselves through the unities of ownership, operation, and use. Unity of ownership means the group is under the common control of a single corporation, which is also a member of the group. Control exists when the controlling corporation directly or indirectly owns more than 50 percent of the voting stock of a controlled corporation. Unity of operation means the group receives benefits from functional integration or economies of scale. Unity of use means the group of corporations contributes to or receives benefits from centralized management and policy formation. When unity of ownership exists, there is a presumption that the corporations are engaged in a unitary business if all activities of the group are in the same general line or type of business, activities of the group constitute different steps in a vertically structured enterprise, or the group is characterized by centralized management.

North Dakota is one of 23 states that have adopted the Uniform Division of Income Tax Act. This provides for apportionment of corporate income and contains detailed provisions relating to property, payroll, and sales factor computations.

Water's Edge Election

A corporation required to file its North Dakota return using the worldwide unity combined reporting method may elect to use the "water's edge" method. This election allows exclusion of consideration of most corporate income sourced outside the United States. The water's edge election must be made on the return as originally filed and is binding on the corporation for five consecutive years. If the election is made, the corporation may not use the deduction for federal income taxes paid. A corporation electing to use the water's edge method

must file with the Tax Commissioner a domestic disclosure spreadsheet and must refile the spreadsheet every third year while the election remains in effect. A domestic disclosure spreadsheet must fully disclose income reported to each state, state tax liability, the method used to apportion or allocate income to the various states, and other information required to determine the proper tax due to each state and to identify the water's edge group.

Deductions, Additions, Credits, and Exemptions

A corporation is entitled to subtract from taxable income each of the following items:

1. Interest received from obligations of the United States included in taxable income on the federal return.
2. Income included in taxable income on the federal return which is exempt from taxation by the state under the Constitution of the United States or the Constitution of North Dakota.
3. The amount of federal income tax liability to the extent those taxes are computed on income that becomes part of North Dakota taxable income.
4. Net income not allocated and apportioned to this state which was included in federal taxable income.
5. Dividends received by the corporation from a corporation that has paid North Dakota corporate income taxes or from a financial institution that has paid financial institutions taxes under NDCC Chapter 57-35.3.

The following must be added to taxable income:

1. Income taxes, including taxes of foreign countries, that were deducted to determine federal taxable income.
2. Interest and dividends from foreign securities and securities of states and political subdivisions exempt from federal income taxes, but not including obligations of the state of North Dakota or any of its political subdivisions.
3. Accelerated cost-recovery system depreciation on assets placed in service in 1981 or 1982.
4. Safe-harbor lease amounts deducted on the federal return if the minimum investment by the lessor is less than 100 percent.

Corporate income tax credits are allowed for:

1. Wages and salaries paid by a new business, in the amount of 1 percent of all wages and salaries for the first three years and one-half of 1 percent of all wages and salaries for the fourth and fifth years. A corporation that receives a new or expanding business income tax exemption under NDCC Chapter 40-57.1 does not receive this credit.
2. Investment in a North Dakota venture capital corporation in the amount of 25 percent of the investment or \$250,000, whichever is less.
3. Investment in a small business investment company, limited to 25 percent of the amount invested.

4. Investment in a certified nonprofit development corporation, limited to 25 percent of the amount invested.
5. Research and experimental expenditures incurred within North Dakota.
6. Contributions to nonprofit private high schools and nonprofit private colleges in the state.
7. Installation of geothermal, solar, or wind energy devices.
8. Installation of alternative fuel equipment on a North Dakota licensed motor vehicle.
9. A portion of North Dakota wages paid to a developmentally disabled or chronically mentally ill employee.
10. Qualified investments in a North Dakota renaissance fund corporation.
11. Investment in historic property preservation or renovation in a renaissance zone.

Certain activities are exempt from corporate income taxes. A new or expansion project in primary sector business or tourism qualifies for an income tax exemption for up to five years. The exemption is limited to income earned from the qualifying project and the operator is required to file a return even though an exemption is granted. A project may not receive the exemption if the project receives a tax exemption under tax increment financing, the exemption fosters unfair competition or endangers existing business, or there is a recorded lien for delinquent property, income, or sales or use taxes against the project operator or principal officers.

Renaissance zone exemptions are available to exempt business income for five years for purchasing or leasing renaissance zone real property for use in the business or for improving renaissance zone real property used in the business. A renaissance zone exemption is also available for investment income for five years from renaissance zone residential or commercial real property purchased solely for investment purposes.

Tax Collections

The corporate income tax is a significant source of revenue for the state general fund. The following table shows corporate income tax collections in recent years:

Fiscal Year	Net Collections
1990	\$40,486,001
1991	\$49,321,208
1992	\$36,778,251
1993	\$42,525,921
1994	\$50,727,400
1995	\$44,027,738
1996	\$49,047,417
1997	\$50,300,520
1998	\$65,543,025
1999	\$57,877,194
2000	\$47,528,001
2001	\$51,606,853

Committee Consideration

The committee received information from several sources on the significance of corporate income taxes as a business location factor. Testimony supported the conclusion that state tax policy is not a primary

consideration of businesses in choosing a location for new or expanding business. Even when tax policy becomes a consideration, it is not only corporate income taxes that must be considered but also workers' compensation and unemployment insurance rates, property taxes, and other state and local government costs of business. Studies of the issue indicate that tax policy is only a small part of business costs, but it receives attention because businesses view taxes as negotiable by use of tax incentives in business location decisions. The Economic Development and Finance Division applied an economic analysis model to gauge the effect on the North Dakota economy of eliminating the corporate income tax. The analysis projects increases in employment and statewide economic output, but these gains did not offset the loss of corporate income tax revenue to the state. A Tax Department analysis of the same issue concluded that it would be necessary to create 75,000 new jobs paying an average annual salary of \$50,000 to offset the revenue lost to the state from elimination of the corporate income tax.

The committee considered a bill draft that would have repealed the corporate income tax. The Tax Department estimated the fiscal effect of repeal of the corporate income tax as a loss of \$8.6 million in the first six months of 2003 and a loss of \$79.5 million in the 2003-05 biennium. The committee makes no recommendation with respect to the bill draft.

North Dakota is one of five states that allow a corporate income tax deduction based on the amount of federal corporate income taxes paid. A revenue-neutral elimination of the federal income tax deduction for North Dakota corporations would result in a substantial reduction in the corporate income tax rates in North Dakota. However, the change would not be revenue-neutral for all corporations. Because of variable circumstances of corporations, eliminating the federal income tax deduction and making a corresponding reduction in the state corporate income tax rates would result in some paying more and some paying less than they pay under current law. The committee considered but makes no recommendation with respect to a bill draft that would have eliminated the federal income tax deduction and made corresponding revenue-neutral reductions in state corporate income tax rates.

Recommendation

The committee recommends Senate Bill No. 2054 to eliminate the federal income tax deduction for state income tax purposes and to replace existing graduated corporate income tax rates with a corporate income tax flat rate of 6.84 percent. The bill provides a corporate income tax flat rate of 9.9 percent for taxable income of corporations filing under the water's edge election. The reason for the higher rate for water's edge filers is that under current law, those filers must forego the federal income tax deduction for the privilege of filing on a water's edge basis and because the federal income tax deduction is eliminated by the bill, not imposing taxes at a higher rate would provide a much greater incentive for filing on a water's edge basis than exists under current

law. The bill is intended to enhance the attractiveness of North Dakota's tax climate by reducing corporate income tax rates from the existing high of 10.5 to 6.84 percent. The fiscal effect of the bill is estimated to be a loss of \$700,000 in the first six months of 2003 and a loss of \$3.2 million for the 2003-05 biennium.

AGRICULTURAL PROPERTY ASSESSMENT STUDY

Background

In 1981 the Legislative Assembly restructured property tax assessments in the state and changed the basis for valuation of agricultural property to a formula based on the property's productivity value. True and full value of agricultural property for property tax purposes is based on productivity, as established through computation of the capitalized average annual gross return of the land as made by North Dakota State University Department of Agricultural Economics.

The Department of Agricultural Economics determines annual gross return for property based on the best statistical agricultural production information it can obtain. For minor production crops, such as lentils and field peas, production statistics are not available so values based on known crops are substituted. Canola was in this category until 2000, when the National Agricultural Statistics Service recognized the growth in canola production and began gathering production data. It is not believed that lack of data on minor crops has a substantial impact on countywide valuations.

Annual gross return for rented land is determined from crop share or cash rent data, and for other land, annual gross return is 30 percent of annual gross income for cropland used for growing crops other than sugar beets or potatoes, 20 percent of annual gross income for cropland used for growing sugar beets or potatoes, and 25 percent of annual gross income potential based on animal unit carrying capacity of the land for land used for grazing animals. Average annual gross return for each county is determined by using annual gross returns for the county for the 10 most recent years, discarding the highest and lowest annual gross returns from those years, and averaging the returns for the remaining eight years. Average annual gross return is indexed for inflation to reflect changes in prices paid by farmers. This cost of production factor is determined by the Department of Agricultural Economics by comparing National Agricultural Statistics Service indexes of prices paid by farmers over a period of 10 years, discarding the highest and lowest years' indexes, and averaging the remaining eight years' indexes. This amount is divided by the base year index of prices paid by farmers during the seven-year period ending in 1995.

Average annual gross return for agricultural property is capitalized using a 10-year average of the most recent 12-year period for the gross Farm Credit Services mortgage rate of interest.

An average agricultural value per acre is established for cropland and noncropland on a statewide and countywide basis. The Department of Agricultural Economics

provides this information to the Tax Commissioner by December 1 of each year, and the Tax Commissioner provides the information to each county director of tax equalization. The county director of tax equalization uses the countywide average received from the Tax Commissioner as the basis for determining and providing each assessor in the county with an estimate of the average agricultural value of agricultural lands within the assessor's district. The assessor uses the average valuation received from the county director of tax equalization to determine the value of each assessment parcel within that district. Within each county and assessment district, the average of values assigned to agricultural property must approximate the averages determined under the formula for the county or assigned to the district by the county director of tax equalization. In determining relative values of parcels of property, local assessment officials are to use soil type and soil classification data whenever possible.

Inundated agricultural land is an exception to the valuation formula. Inundated agricultural land is defined as agricultural property containing a minimum of 10 contiguous acres, if the value of the inundated land exceeds 10 percent of the average agricultural value of noncropland for the county, which is inundated to an extent making it unsuitable for growing crops or grazing farm animals for two consecutive growing seasons or more and which produced revenue from any source in the most recent prior year which is less than the county average revenue per acre for noncropland. Application for classification as inundated agricultural land must be made in writing to the township assessor or county director of tax equalization by March 31 of each year. Before all or part of a parcel of property may be classified as inundated agricultural land, the board of county commissioners must approve that classification for that property for the taxable year. The agricultural value of inundated agricultural lands must be determined by the Department of Agricultural Economics to be 10 percent of the average agricultural value of noncropland for the county as determined under the formula. Valuation of individual parcels of inundated agricultural land may recognize the probability that the property will be suitable for agricultural production as cropland or for grazing farm animals in the future.

Committee Consideration

The committee received a detailed review of the gathering of statistics and operation of the agricultural property valuation formula. Production statistics for the most recent 10 years are used in the formula and the high and low years are eliminated and the remaining eight years averaged. Gross revenue for cropland in each county is based on acreage yield per acre and price for each crop for the county. These statistics are gathered by the National Agricultural Statistics Service of the United States Department of Agriculture. Gross revenue from crop production is determined for each crop grown in the county by multiplying acreage times yield per acre to determine production, production is

multiplied times price to determine value of production for each crop in the county, acres for summer fallow and all crops are added, and values of production for all crops are totaled to determine county cropland production. Rangeland and pastureland is valued by estimating value of calves and cull cows produced per acre. These estimates are based on the livestock carrying capacity measured in animal unit months, which is assumed to be enough grazing capacity to support a 1,000-pound cow and her calf for one month. For purposes of these calculations, it is assumed that one-sixth of the cow herd is culled each year and a six-month grazing season is assumed. Production estimates based on weight gain are multiplied by the price reported by the North Dakota Agricultural Statistics Service to determine a cull cow income per animal unit month. Calf income is determined using a similar method and incorporating statistics on calf production per month and calf prices. Statistics are gathered and incorporated in county production statistics based on government program payments, exclusive of the conservation reserve program. Conservation reserve program payments are divided in half and the remaining amount is included as gross revenue for agricultural land.

The capitalization rate used in the formula has declined each year since 1994. It is estimated that the decline will continue for the foreseeable future and a decline in the capitalization rate produces increasing agricultural property valuations.

A representative of the Department of Agricultural Economics at North Dakota State University pointed out some issues that could be addressed to make the formula more accurate. Reducing conservation reserve program payments by 50 percent understates the income to the landowner of these payments. Crop insurance indemnity payments are not included in statistics used in the formula but have become a significant source of revenue to farmers. Valuation of noncropland assumes a grazing season of six months for all counties, but actual grazing season length varies from north to south and east to west. Total value of calves and cull cows sold is counted as revenue for noncropland, but winter feed for animals comes from cropland and is already included in cropland revenue calculations.

The committee reviewed statistics on agricultural property valuation for each county from 1982 through 2001. From 1982 through 1985 agricultural land valuations under the formula increased. From 1986 through 1992 valuations decreased. From 1993 through 2001 formula valuations have steadily increased with a statewide average valuation increase of more than 37 percent over eight years. Farmers in some parts of the state have expressed frustration with continuing increases in agricultural property valuation when they have observed disaster declarations because of flooding problems for several consecutive years, increased farm foreclosures, weak market prices, and drought in some parts of the state.

The committee explored information on the status of soil surveys in North Dakota. A representative of the

United States Department of Agriculture Natural Resources Conservation Service said the intended soil survey cycle is to provide for resurveys for each county within each 30-year period. It was observed that resurveys should be completed more frequently but the Natural Resources Conservation Service is limited by budget and staffing restraints.

The committee explored a suggested change to using cash rent as the landlord's share of gross returns under the formula. It was suggested that cash rent would be a better measure than the current method of estimating production value. Cash rent information is gathered by the North Dakota Agricultural Statistics Service through surveys of 3,000 farm operators in North Dakota each year. Mail surveys are sent to farm operations and a telephone followup survey is conducted to check accuracy. The committee considered a bill draft that would have substituted cash rent as a basis for computations in the valuation formula. The committee makes no recommendation with respect to the bill draft. Committee members expressed concern that basing assessed valuations on unverified reports of operators is not a reliable method.

The committee explored the history and estimates for future changes in the capitalization rate used in the valuation formula. The committee considered but makes no recommendation with respect to bill drafts that would have established a floor on the capitalization rate and frozen agricultural property assessments. The Agribank annual mortgage rate, which is used as a basis for the capitalization rate under the formula, declined substantially to 6.48 percent for 2001. It is likely that in the next few years substantial decline in the capitalization rate will result in substantial increases in agricultural property valuation.

It was recommended by a local tax official that the agricultural property assessment formula be adjusted to add consideration of an effective tax rate for agricultural property. It was suggested that the agricultural property valuation formula does an adequate job of reflecting the productivity valuation of agricultural property, but the weakness in the capitalization rate used in the formula is that it does not reflect property tax payments by farmers and ranchers.

Recommendation

The committee recommends House Bill No. 1055 to incorporate an effective tax rate calculation in the capitalization rate used for valuation of agricultural property. It was estimated that the effective tax rate would be approximately 1.5 percent, which upon being added to the capitalization rate, would result in a statewide agricultural property valuation decrease of approximately 14 percent. The bill phases in the use of an effective tax rate over four years. The capitalization rate under the current formula is expected to decline, so it is anticipated that the addition of an effective tax rate will not cause substantial shifts in property tax burden among property types.

STUDY DIRECTIVES CONSIDERED AND ASSIGNMENTS MADE BY THE LEGISLATIVE COUNCIL FOR THE 2001-02 INTERIM

The following table identifies the bills and resolutions prioritized by the Legislative Council for study during the 2001-02 interim under authority of North Dakota Century Code Section 54-35-03.

Bill or Resolution No.	Subject Matter
1003 § 14	Study the Racing Commission, including its authority to schedule, promote, support, and regulate live or simulcast racing in North Dakota (Budget Committee on Government Administration)
1012 § 17	Study the feasibility and desirability of state administration of child support, including the fiscal effect on counties and the state (Family Law Committee)
1012 § 18	Study the senior citizen mill levy matching grant program (Budget Committee on Human Services)
1196 § 29	Study the long-term care needs and the nursing facility payment system in North Dakota (Budget Committee on Human Services)
1206 § 2	Study all aspects of improvements by special assessment and property tax assessment and abatements, to include a determination of the true and full value of subsidized housing for property tax assessments, and the homestead tax valuation for senior citizens (Taxation Committee)
1269 § 1	Study issues relating to resident and nonresident hunting in this state (Judiciary B Committee)
1338 § 1	Study issues related to genetic modification, including impacts on health, the environment, the food supply, product labeling, and actions by other jurisdictions regarding experimental medicine and research, and the promulgation of accurate information regarding genetic modification efforts that exist or are expected to exist in the near future - by Legislative Council directive, limited to genetic modification of agricultural products (Agriculture Committee)
1344 § 17	Study the feasibility and desirability of implementing a teacher compensation package that recognizes four levels of teachers from beginning to advanced and which bases the compensation level for each category on the individual teacher's ability to meet or exceed district standards for content knowledge, planning and preparation for instruction, instructional delivery, student assessment, classroom management, and professional responsibility (Education Committee)
1377 § 2	Study the ability of occupational and professional boards with fewer than 100 licensees to process disciplinary complaints and carry out other statutory responsibilities (Commerce Committee)
1390 § 1	Study the use of biodiesel fuel in this state (Agriculture Committee)
1407 § 2	Study existing mandated health insurance coverage of services and the feasibility and desirability of repealing state laws mandating health insurance coverage of services (Section 2 contains a requirement that the Insurance Commissioner evaluate each health insurance coverage mandate and present a report to the Legislative Council before July 1, 2002) (Budget Committee on Health Care)
1441 § 3	Study coordination of the medical assistance and the children's health insurance programs, including the development of a single application form for both programs, whether the children's health insurance program should be administered by the state or the counties, the effects of eliminating the asset eligibility requirement for the medical assistance program, the standardization of the definition of "income" for all programs administered by the Department of Human Services, and the feasibility and desirability of seeking a federal waiver to allow the children's health insurance program plan to provide coverage for a family through an employer-based insurance policy if an employer-based insurance policy is

	more cost-effective than the traditional plan coverage for the children (Budget Committee on Health Care)		expanding North Dakota's economic development marketing efforts to include international markets and establishing a global marketing division within the Department of Commerce (Commerce Committee)
2002 § 7	Study the implementation of the clerk of court unification, including a review of the delivery of services by clerks of court and the responsibility for restitution collection and enforcement activities - by Legislative Council directive, limited to responsibility for restitution collection and enforcement activities (Judiciary A Committee)	2020 § 4	Study workforce training and development programs in North Dakota, including efforts to recruit and retain North Dakota's workforce, underemployment and skills shortages, current workforce training efforts, and the involvement of the new economy initiative goals and strategies; and the Work Force 2000 and new jobs training programs and other workforce training and development programs administered by agencies of the state of North Dakota, and the feasibility and desirability of consolidating in a single agency the funding and administration of those programs (Commerce Committee)
2003 § 17	Study the responsibilities and the functions of the College Technical Education Council and the implementation of the workforce training regions including how the regions are functioning (Higher Education Committee)		
2003 § 18	Study the Board of Higher Education's implementation of the performance and accountability measures report required by Senate Bill No. 2041, including information on education excellence, economic development, student access, student affordability, and financial operations (Higher Education Committee)	2159 § 5	Study highway construction and maintenance funding, including revenue sources and distribution formulas for the state, cities, and counties (Budget Committee on Government Administration)
2007 § 3	Study the management structure and oversight of the Veterans Home and the selection process for the commandant or administrator of the home (Budget Committee on Government Administration)	2187 § 1	Study trusts for individuals with disabilities (Judiciary B Committee)
		2282 § 1	Study methods to encourage production and consumption of ethanol (Agriculture Committee)
2016 § 5	Study the facilities and operations of the Department of Corrections and Rehabilitation (Corrections Committee)	2330 § 1	Study coordination of benefits for children with special needs under the age of 21 among the Department of Public Instruction, the Department of Human Services, and private insurance companies, with the purpose of optimizing and coordinating resources and expanding services including augmentative communication devices and therapy services (Budget Committee on Health Care)
2019 § 16	Study the availability of venture capital, tax credits, and other financing and research and development programs for new or expanding businesses, including an inventory of the programs available, a review of the difference between public and private venture capital programs, an assessment of the needs of business and industry, the research and development efforts of the North Dakota University System, and a review of the investments of the State Investment Board and the feasibility and desirability of investing a portion of these funds in North Dakota (Commerce Committee)	2354 § 1	Study the feasibility and desirability of an alternatives-to-abortion services program that would provide information, counseling, and support services to assist women to choose childbirth and to make informed decisions regarding the choice of adoption or parenting (Budget Committee on Human Services)
		2380 § 6	Study programs dealing with the prevention and treatment of alcohol, tobacco, and drug abuse and other
2019 § 17	Study the feasibility and desirability of		

	kinds of risk-associated behavior which are operated by various state agencies, including the Department of Corrections and Rehabilitation, the Attorney General, the State Department of Health, the Department of Human Services, the Department of Public Instruction, the Department of Transportation, the National Guard, and the Supreme Court, and whether better coordination among the programs within those agencies may lead to a more effective and cost-efficient way of operating the programs and providing services (Budget Committee on Government Services)		
2428 § 1	Study the state and local tax structure for funding of elementary and secondary education to determine the feasibility and desirability of enhanced state funding to school districts for delivery of core curriculum instruction, the equity of the existing degree of reliance on property tax revenues for elementary and secondary education funding, and whether improved efficiency is attainable in delivery of elementary and secondary education services (Education Committee)	3047	discovery of cultural or paleontological resources within local road projects (Advisory Commission on Intergovernmental Relations)
			Study the property tax assessment and valuation of agricultural property (Taxation Committee)
		3052	Study issues of safety, efficiency, and cost-effectiveness with respect to school district transportation (Education Committee)
		3057	Study the technological capacity and needs of the state - by Legislative Council directive, expanded to include delivery of library services by technology (Information Technology Committee)
		3061	Study the delivery of elementary and secondary education during the ensuing 5, 10, and 20 years, with emphasis on a review of the current school district structure, reorganization options, the potential for creating alternate administrative units, and the equitable distribution of state aid to school districts and to obtain the information necessary for this study through a variety of means, including testimony from school district superintendents and business managers (Education Committee)
2448 § 1	Study compliance and jurisdictional issues under the tobacco, alcohol, and fuels tax laws (Taxation Committee)	4014	Study the adoption laws of this state and other states (Family Law Committee)
3003	Study and develop a legislative redistricting plan or plans for use in the 2002 primary election (Legislative Redistricting Committee)	4017	Study the feasibility and desirability of implementing a retirement program for all law enforcement and correctional officers within the state of North Dakota which provides retirement benefits similar to those provided to the members of the Highway Patrolmen's retirement system pursuant to North Dakota Century Code Chapter 39-03.1 (Employee Benefits Programs Committee)
3005	Study the fees and point demerits for traffic offenses (Judiciary B Committee)		
3017	Study the method of providing legal representation for indigent criminal defendants and the feasibility and desirability of establishing a public defender system (Judiciary A Committee)	4018	Study the commitment procedures contained in North Dakota Century Code Chapter 25-03.1 and the commitment laws from other states to determine if North Dakota law sufficiently addresses the treatment needs of controlled substance abusers in this state, to study the mandatory minimum sentence requirements of North Dakota Century Code Chapter 19-03.1 and the mandatory minimum sentencing
3022	Study the use of incentive programs in North Dakota as a way of keeping elk in the state and providing increased opportunities for landowners, hunters, and the general public (Judiciary B Committee)		
3037	Study the feasibility and desirability of creating cost-sharing or funding mechanisms for the unexpected		

	laws from other states and the federal government relating to drug offenders, and to study the need for legislation to assist in the cooperative efforts of state, local, and federal agencies to combat unlawful drug use and abuse in this state (Corrections Committee)	4-05.1-19(10)	Receive status report from the State Board of Agricultural Research and Education (Budget Section)
		4-19-01.2	Approve use of moneys deposited in State Forester reserve account (Budget Section)
4019	Study medical and financial privacy laws in this state, the effectiveness of medical and financial privacy laws in other states, the interaction of federal and state medical and financial privacy laws, and whether current medical and financial privacy protections meet the reasonable expectations of the citizens of North Dakota (Family Law Committee)	4-24-10	Determine when agricultural commodity promotion groups must report to the standing Agriculture Committees (Legislative Management Committee)
		10-19.1-152	Receive annual audit report from corporation receiving ethyl alcohol or methanol production subsidy (Legislative Audit and Fiscal Review Committee)
4027	Study the prices for prescription drugs and possible mechanisms to lower those costs to consumers and the state, and whether the state should establish a program to assist in the purchase of prescription drugs based upon income (Budget Committee on Health Care)	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)
4031	Study the state corporate income tax laws (Taxation 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)
4032	Study the feasibility and desirability of exempting funds set aside in a trust for a child's education when determining the child's eligibility for certain human services programs (Judiciary B Committee)	15-10-12.1	Authorize the State Board of Higher Education to authorize construction of any building, or campus improvements and building maintenance of more than \$385,000, if financed by donations (Budget Section)
4033	Study the commitment procedures for individuals with mental illness (Judiciary A Committee)	15-10-12.3	Receive biennial report from each institution under the control of the State Board of Higher Education undertaking a capital construction project that was approved by the Legislative Assembly and for which local funds are to be used which details the source of all funds used in the project (Budget Section)
4034	Study the issues and concerns of implementing charitable choice, the privatization of federally funded welfare services through faith-based organizations (Budget Committee on Human Services)		
4042	Study the feasibility and desirability of a centralized process for administering noncriminal traffic violations (Judiciary B Committee)	15-39.1-10.11	Receive annual report from the Board of Trustees of the Teachers' Fund for Retirement regarding annual test of actuarial adequacy of statutory contribution rate
		15.1-02-13	Receive from the Superintendent of Public Instruction the compilation of annual school district employee compensation reports (Education Committee)
NDCC Citation	Subject Matter (Committee)		
4-02.1-18	Receive annual audit report from State Fair Association (Legislative Audit and Fiscal Review Committee)		
4-05.1-19(8)	Receive report from the Agricultural Research Board on its annual evaluation of research activities and expenditures (Agriculture Committee)	15.1-02-14	Receive annual report from the Superintendent of Public Instruction regarding any transfer to the state tuition fund by the Superintendent of

	federal or other moneys received by the Superintendent to pay programmatic administrative expenses for which the Superintendent received a state general fund appropriation (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)
15.1-06-08	Receive report from the Superintendent of Public Instruction of a request from a school or school district for a waiver of any rule governing the accreditation of schools (Education Committee)	28-32-07	Approve extension of time for administrative agencies to adopt rules (Administrative Rules Committee)
15.1-06-08.1	Receive report from the Superintendent of Public Instruction of a request from a school or school district for a waiver of NDCC Section 15.1-21-03 (Education Committee)	28-32-10	Establish standard procedures for administrative agency compliance with notice requirements of proposed rulemaking (Administrative Rules Committee)
15.1-21-10	Receive from the Superintendent of Public Instruction the compilation of test scores of a test aligned to the state content standards in reading and mathematics, given annually to students in three grades statewide (Education Committee)	28-32-10	Establish procedure to distribute copies of administrative agency filings of notice of proposed rulemaking (Administrative Rules Committee)
18-11-15	Receive notice from a firefighters relief association concerning service benefits paid under a special schedule (Employee Benefits Programs Committee)	28-32-18	Determine whether an administrative rule is void (Administrative Rules Committee)
19-03.1-44	Receive report from the Attorney General before July 2 of every even-numbered year on the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in this state (Corrections Committee)	28-32-42	Receive notice of appeal of an administrative agency's rulemaking action (Administrative Rules Committee)
20.1-02-05.1	Approve comprehensive statewide land acquisition plan established by the director of the Game and Fish Department and every land acquisition of more than 10 acres or exceeding \$10,000 by the Game and Fish Department (Budget Section)	36-22-09	Receive the audit report of the North Dakota Stockmen's Association (Legislative Audit and Fiscal Review 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 million (Budget Section)	40-23-22.1	Approve waiver of exemption of state property in a city from special assessments levied for flood control purposes (Budget Section)
25-04-02.2	Authorize Developmental Center at Westwood Park, Grafton, to provide services under contract with a governmental or nongovernmental person (Budget Section)	40-63-03	Receive annual reports from the Division of Community Services on renaissance zone progress (Commerce Committee)
25-04-17	Receive report on writeoff of patients' accounts at Developmental Center at Westwood Park, Grafton (Legislative Audit and Fiscal Review Committee)	40-63-07	Receive annual report from the Division of Community Services on conclusions of annual audits of renaissance fund organizations (Budget Section)
		43-12.1-08.2 (effective through September 30, 2006)	Receive annual report from the Board of Nursing on its study, if conducted, of the nursing educational requirements in this state and the nursing shortage in this state and the implications for rural communities (Budget Committee on Health Care)
		46-02-05	Determine contents of contracts for printing of legislative bills, resolutions, journals, and Session Laws (Legislative Management Committee)
		48-02-20	Approve the change or expansion of, or any additional expenditure for, a state building construction project

	approved by the Legislative Assembly (Budget Section)	54-06-26	Establish guidelines defining reasonable and appropriate use of state telephones by legislative branch personnel (Legislative Management 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)	54-06-30	Receive periodic reports from the Central Personnel Division on the implementation, progress, and bonuses provided under state agency pilot programs to provide bonuses to recruit or retain classified state employees (Budget Committee on Government Services)
50-06-05.1	Approve termination of federal food stamp or energy assistance program (Budget Section)	54-10-01	Determine frequency of audits of state agencies (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)	54-10-01	Determine necessary performance audits by State Auditor (Legislative Audit and Fiscal Review Committee)
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)	54-10-13	Determine when State Auditor is to perform audits of political subdivisions (Legislative Audit and Fiscal Review Committee)
50-29-02	Receive annual report from the Department of Human Services describing enrollment statistics and costs associated with the children's health insurance program state plan (Budget Committee on Health Care)	54-10-15	Order the State Auditor to audit or review the accounts of any political subdivision (Legislative Audit and Fiscal Review Committee)
52-02-17	Receive report from Job Service North Dakota before March 1 of each year on the actual job insurance trust fund balance and the targeted modified average high-cost multiplier, as of December 31 of the previous year, and a projected trust fund balance for the next three years (Budget Section)	54-14-03.1	Receive reports on fiscal irregularities (Budget Section)
52-02-18	Receive report of biennial performance audit of the divisions of Job Service North Dakota (Legislative Audit and Fiscal Review Committee)	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)
54-03-26	Determine the fee payable by legislators for use of personal computers (Legislative Management Committee)	54-16-04	Approve transfers exceeding \$50,000 from one fund or line item to another unless necessary to comply with court order or to avoid imminent threat to safety or imminent financial loss to the state (Budget Section)
54-03-28	Contract with a private entity, after receiving recommendations from the Insurance Commissioner, to provide a cost-benefit analysis of every legislative measure mandating health insurance coverage of services or payment for specified providers of services, or an amendment that mandates such coverage or payment (Budget Committee on Health Care)	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)
		54-16-04.2	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)
		54-23.3-08	Receive report from the director of

	the Department of Corrections and Rehabilitation on any new program that serves adult or juvenile offenders, including alternatives to conventional incarceration and programs operated on a contract basis, if the program is anticipated to cost in excess of \$100,000 during a biennium (Budget Section)		standards, the statewide information technology plan, and major information technology projects; review cost-benefit analyses of major projects; conduct studies; and make recommendations regarding established or proposed information technology programs and information technology acquisition (Information Technology Committee)
54-27-22	Approve use of capital improvements planning revolving fund (Budget Section)	54-35-18	Study the impact of competition on the generation, transmission, and distribution of electric energy within this state (Electric Industry Competition Committee)
54-27-23	Approve use of cash flow financing (Budget Section)		
54-27.2-03	Receive report on transfers of funds from the budget stabilization fund to the state general fund to offset projected decrease in general fund revenues (Budget Section)	54-35-18.2	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 A 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)
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)	54-40-01	Approve any agreement between a North Dakota state entity and South Dakota to form a bistate authority (Budget Committee on Government Services)
54-35-02.2	Study and review audit reports submitted by the State Auditor (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)
54-35-02.4	Review legislative measures and proposals affecting public employees retirement programs and health and retiree health plans (Employee Benefits Programs Committee)	54-44.1-07	Prescribe form of budget information prepared by the director of the budget (Budget Section)
54-35-02.6	Study and review administrative rules and related statutes (Administrative Rules Committee)	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)
54-35-02.7	Overview of the Garrison Diversion Project and related matters (Garrison Diversion Overview Committee)		
54-35-02.8	As the Legislative Ethics Committee-- Consider or prepare a legislative code of ethics (Legislative Management Committee)	54-44.1-13.1	Approve reduction of budgets due to initiative or referendum action (Budget Section)
54-35-11	Make arrangements for 2003 session (Legislative Management Committee)	54-52.1-08.2	Approve terminology adopted by the Public Employees Retirement System Board to comply with federal requirements (Employee Benefits Programs Committee)
54-35-15.2	Review the activities of the Information Technology Department, statewide information technology		

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)		Committee by November 1 of each even-numbered year on city and county fees on telephone exchange access service and wireless service (Information Technology Committee)
		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)
54-59-05(4)	Approve execution by the Information Technology Department of proposed agreement to finance the purchase of software, equipment, or implementation of services in excess of \$1 million (Budget Section)	65-02-05.1	Receive biennial report from the Workers Compensation Bureau on all revenues deposited into and expenditures from the building maintenance account of the workers' compensation fund (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)	65-02-30	Receive report from director of the Workers Compensation Bureau, chairman of the Workers Compensation Board of Directors, and the auditor regarding the biennial performance audit of the Workers Compensation Bureau (Legislative Audit and Fiscal Review Committee)
54-59-13	Receive report from the Information Technology Department regarding any executive branch state agency or institution that does not agree to conform to its information technology plan or comply with statewide policies and standards (Information Technology Committee)	65-04-03.1	Receive periodic reports from the Workers Compensation Bureau and the Risk Management Division of the Office of Management and Budget on the success of a single workers' compensation account for state entities covered by NDCC Chapter 32-12.2 (Budget Section)
54-59-19	Receive summary of annual report from the Information Technology Department (Budget Section)	65-06.2-09	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 Committee)
54-59-19	Receive summary of annual report from the Information Technology Department (Legislative Audit and Fiscal Review Committee)	65-08.1-02	Authorize establishment of casualty insurance organization to provide extraterritorial workers' compensation insurance (Budget Section)
54-60-03	Determine the standing committees that will receive the report from the Commissioner of Commerce on the department's goals and objectives, its long-term goals and objectives, and on commerce benchmarks (Legislative Management Committee)		
		1999 Session Laws Citation Chapter 90 § 5	Subject Matter (Committee) 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
57-40.6-11	Receive annual report from State Radio on the operation of and any recommended changes in the emergency 911 telephone system standards and guidelines (Information Technology Committee)		
57-40.6-12	Receive report from the Public Safety Answering Points Coordinating		

	revenues (Budget Committee on Government Services)		expenses of the center (Budget Section)
Chapter 273 § 2	Receive report from the director of the Department of Transportation in 2002 regarding the effectiveness of exempting a secured person from noneconomic loss by certain injured persons operating a motor vehicle (Judiciary B Committee)	Chapter 23 § 2	Receive report from the Workers Compensation Board of Directors on any additional full-time equivalent employee positions and related funding authorized by the board (Budget Section)
2001 Session Laws Citation	Subject Matter (Committee)	Chapter 23 § 5	Receive report from the Workers Compensation Bureau on plans for leasing rental space in its new facility to other state agencies (Budget Section)
Chapter 12 § 20	Approve request by the Department of Human Services to expend funds to make up any anticipated shortfall in medical assistance grants during the 2001-03 biennium at a level that would require a request for a general fund deficiency appropriation from the 58th Legislative Assembly (Budget Section)	Chapter 28 § 14	Approve use of funds by the Forest Service for construction of the Towner nursery tree storage building (Budget Section)
Chapter 12 § 20	Receive report from the Department of Human Services at each meeting during the 2001-02 interim on the status of actual medical assistance expenditures to projections based on legislative appropriations for the 2001-03 biennium (Budget Section)	Chapter 28 § 15	Receive report from the State Board of Higher Education on the board's progress toward establishing a long-term enrollment management plan and procedures (Higher Education Committee)
Chapter 12 § 23	Approve use by the State Hospital, during the second year of the 2001-03 biennium, of projected savings from other areas of the budget to provide funding for the costs of closing the State Hospital landfill (Budget Section)	Chapter 28 § 20	Approve use of funds by the State College of Science to assist in the Blikre Activities Center addition (Budget Section)
Chapter 15 § 12	Approve transfers from the Bank of North Dakota to the state general fund if general fund revenue collections will not meet the revenues as forecast in the March 2001 legislative forecast (Budget Section)	Chapter 33 § 2	Approve an additional one-half full-time position in the Department of Financial Institutions for the licensing and regulation of deferred presentment service providers (Budget Section)
Chapter 15 § 14	Approve state agency termination of a program for which federal funding has been terminated (Budget Section)	Chapter 39 § 2	Approve statewide grants, not otherwise specifically approved by the Legislative Assembly, distributed by the Children's Services Coordinating Committee (Budget Section)
Chapter 15 § 14	Approve state agency program termination, reduction, or change resulting from federal block grant changes (Budget Section)	Chapter 41 § 7	Approve use of general or special fund moneys by the Department of Corrections and Rehabilitation to supplant reduced federal funding during the 2001-03 biennium for any programs administered by the department (Budget Section)
Chapter 15 § 21	Approve plan by the Fargo Family Healthcare Center to address sustainability of programs at the center and plan by the city of Fargo to forgive debt for rental	Chapter 44 § 4	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)		recommendations for the biennium (Budget Section)
Chapter 44 § 7	Receive periodic reports from the Commissioner of Commerce during the 2001-02 interim on the status of the establishment of the Department of Commerce (Budget Section)	Chapter 79 § 2	Receive report from the State Seed Commissioner before July 1, 2002, regarding the regional, national, and international status of genetically enhanced or modified seeds and crops, with attention to the ecological, environmental, health, and marketing aspects of genetically enhanced or modified seeds and crops (Agriculture Committee)
Chapter 44 § 7	Receive report at the Budget Section's first meeting after June 30, 2002, from the Commissioner of Commerce on the department's progress in achieving its performance measures for the 2001-03 biennium (Budget Section)	Chapter 109 § 15	Receive report from the Securities Commissioner before August 1, 2002, of the commissioner's findings and recommendations resulting from the commissioner's review of policies and procedures relating to access to capital for North Dakota companies, with the goal of increasing North Dakota companies' access to capital investment (Commerce Committee)
Chapter 45 § 5	Receive report during the 2001-02 interim from the North Dakota University System regarding the amount of funds raised in each region of the state during the first fiscal year of the biennium and the amount anticipated to be raised before June 30, 2003 (Budget Section)	Chapter 145 § 15	Determine the standing committees of the 58th Legislative Assembly which will receive the report from the Labor Commissioner on the nature, number, status, and disposition of complaints received by the Department of Labor under NDCC Chapters 14-02.4 and 14-02.5 (Legislative Management Committee)
Chapter 46 § 10	Receive status report from the State Board of Agricultural Research and Education during the 2001-03 biennium concerning employees, expenditures, research and cooperative projects, and source of income for the extension centers and main station (Budget Section)	Chapter 250 § 2	Receive reports from State Health Officer not later than December 31, 2001, and November 1, 2002, regarding the implementation of the community health grant program (Budget Committee on Government Services)
Chapter 47 § 2	Approve transfers of funds between line items of appropriations for the Information Technology Department which increase line items in excess of the amount included in the January 7, 2001, executive recommendation (Budget Section)	Chapter 281 § 1	Receive report from the Insurance Commissioner before November 1, 2002, regarding motor vehicle insurance independent medical examinations (Budget Committee on Health Care)
Chapter 47 § 2	Receive report from the Chief Information Officer on transfers of funds between line items of appropriations for the Information Technology Department authorized the director of the Office of Management and Budget and the State Treasurer (Budget Section)	Chapter 330 § 5	Receive notice from the Public Employees Retirement System Board of the date the board receives a letter ruling from the Internal Revenue Service that the
Chapter 49 § 1	Receive report from the Adjutant General of the results of the Adjutant General's major repair and maintenance needs survey of all political subdivision-owned armories and project		

section allowing a member to purchase service credit with pretax or aftertax moneys does not jeopardize the qualified status of the Highway Patrolmen's retirement system (Employee Benefits Programs Committee)

Chapter 438 § 1

Receive quarterly report from the Department of Human Services during the 2001-02 interim regarding the progress in cooperating with developmental disabilities services providers representing each of the eight human service regions in the preparation of a joint recommendation for consideration by the 58th Legislative Assembly regarding a new statewide developmental disability services provider reimbursement system (Budget Committee on Human Services)

Chapter 471 § 2

Receive report from the Insurance Commissioner before July 1, 2002, of evaluation of each existing health insurance coverage mandate on the basis of cost or effect on insurance premiums as these relate to the benefits and evaluation of the benefits of reducing the need for future health care services due to early identification and treatment (Budget Committee on Health Care)

Chapter 494 § 11

Receive notice from the Public Employees Retirement System Board of the date the board receives a letter ruling from the Internal Revenue Service that the section allowing a member to purchase service credit with pretax or aftertax moneys does not jeopardize the qualified status of the Public Employees Retirement System (Employee Benefits Programs Committee)

Chapter 500 § 9

Receive report from the Information Technology Department on performance measures developed by the department to assist the Legislative Assembly in determining the effectiveness and efficiency of the department's operations during the 2001-03 biennium (Budget Section)

Chapter 500 § 9

Receive report from the Information Technology Department on performance measures developed by the department to assist the Legislative Assembly in determining the effectiveness and efficiency of the department's operations during the 2001-03 biennium (Information Technology Committee)

Chapter 500 § 9

Receive report from the Information Technology Department on performance measures developed by the department to assist the Legislative Assembly in determining the effectiveness and efficiency of the department's operations during the 2001-03 biennium (Legislative Audit and Fiscal Review Committee)

Chapter 501 § 10

Receive report from the Superintendent of Public Instruction at least once every five months during the 2001-02 interim on the Superintendent's pursuit of grant funds during the 2001-03 biennium for projects relating to the use of technology in elementary and secondary education (Information Technology Committee)

LEGISLATIVE COUNCIL ASSIGNMENTS

The following table identifies additional assignments by the Legislative Council or the Legislative Council chairman to interim committees.

Responsibility	Responsibility
Study grain shipping rates	Agriculture 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
Review wind energy	Electric Industry Competition Committee
Statutory and constitutional revision	Judiciary A 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 2001-02 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		
1015 § 22	Study health insurance company benefit limitations, including maximum payments or reimbursements for prescribed medicines and treatments and the effect of limiting benefit payments or reimbursements on consumers, family members, and individuals with incurable illnesses	3010	Study the property tax exemption for public housing authorities
1431 § 1	Study the correctional system in North Dakota, including its functions, responsibilities, funding, causes for increases in the state's inmate population, and the effectiveness of sentencing laws, incarceration, and treatment	3013	Study the designation of highways in the state highway system and the county road system
2012 § 2	Study the efficiency and effectiveness of the operations of the State Fleet Services program of the Department of Transportation	3015	Study the separation of powers between the legislative, executive, and judicial branches and the distinction between the responsibilities of each branch
2015 § 16	Study the mission of the Industrial Commission relating to the responsibilities of the Oil and Gas Division and Geological Survey and the potential for efficiencies resulting from shared administrative and service delivery functions	3023	Study the use of easements to protect agricultural and other lands in North Dakota
2016 § 4	Study wages paid to inmates sentenced to the state correctional system and the various deductions from those wages, including methods used to determine rates of pay; actual wages paid to inmates; deductions from inmate wages; and the effect deductions for incarceration costs, facility operation costs, and capital improvement costs have on inmate payments for child support and restitution	3026	Study the feasibility and desirability of wind energy development in North Dakota
2174 § 1	Study the feasibility of altering North Dakota medical assistance requirements to permit the disregard of income of the spouse of a disabled individual up to the amount of the cap established under Section 1924(d)(3)(C) of the Social Security Act [42 U.S.C. 1396r-5(d)(3)(C)]	3043	Study the fiscal note process
2324 § 1	Study the delivery of a core curriculum to each elementary and high school student in this state and the feasibility and desirability of providing total state funding solely for the delivery of a core curriculum	3044	Study the feasibility and desirability of establishing a putative fathers' adoption registry
2419 § 2	Study issues regarding financial responsibility requirements for commercial pesticide applicators	3048	Study the feasibility and desirability of creating a State Department of Health Division of Women's Health and an Advisory Committee on Women's Health
3002	Study the completed revision of those	3050	Study the feasibility and desirability of realigning the divisions within the Department of Human Services or moving some divisions or functions to the Department of Health or other state agencies
		3054	Study the impact on domestic relations law of using the term "parental responsibility" in lieu of "custody" and "parenting time" in lieu of "visitation"
		3055	Study the effectiveness of various economic development incentives and the feasibility and desirability of creating a reporting system that assists in compiling a complete inventory of economic development incentive programs and in evaluating the effectiveness of the programs
		3056	Study the state of and future demands on the transportation infrastructure in this state
		3058	Study current and 5-, 10-, 25-, and 50-year projections of the delivery of health care services in the state, including the capacity, distribution, and accessibility of the system of providing health services; the changing dynamics

	of delivery and funding of health services; possible health care services strategies to better serve residents; the role of health care services in future development in this state; and the effects of having inadequate reimbursement in this state, including the impact of inadequate reimbursement on the continued availability, viability, and financial stability of health care	3066	Study the feasibility and desirability of increasing the communication between the executive and legislative branches to monitor and assess the development of state policy regarding economics, population, and business growth
3059	Study the water concerns and needs of North Dakota	3067	Study the feasibility and desirability of establishing a behavior modification academy for certain adult and juvenile offenders
3060	Study the feasibility and desirability of providing school district property tax relief and replacement of revenues through state funding	3068	Study the feasibility and desirability of creating a tiered early childhood facility licensure system that requires licensure of facilities not required to be licensed under the current system
3062	Study issues relating to the high and rising cost of prescription drugs in the United States and inequitable prescription drug pricing in the United States and possible methods of containing prescription drug costs	4001	Study the property tax exemption for institutions of public charity providing a combination of health and housing services
3064	Study workers' compensation fraud by employers, employees, attorneys, health care providers, and rehabilitation service providers in order to identify the financial impact of such fraud on the North Dakota workers' compensation fund, the most appropriate method of addressing such fraud, and the cost of addressing such fraud	4011	Study the library system in North Dakota to determine the most efficient and effective methods for delivery of library services
3065	Study the negative impact due to diminishing rail access and service, the cost to industry, business, and communities of shifting rail services to state and local highway systems, and the feasibility and desirability of funding enhanced rail facilities including an intermodal rail facility in this state	4020	Study state employee compensation and benefit levels
		4038	Study the benefits and risks associated with the use of contracts in agricultural production, including growing and sales provisions, labor arrangements, chemical usage, and provisions necessitated by emerging technologies
		4043	Study the feasibility and desirability of promoting carbon sequestration programs in this state
		4046	Study issues related to the Missouri River in this state
		4049	Study limiting actions for lead-based paint claims

2003 NORTH DAKOTA LEGISLATIVE COUNCIL BILL AND RESOLUTION SUMMARIES

HOUSE

House Bill No. 1024 - County Mill Levy Consolidation. This bill consolidates several special county mill levies into a county general fund levy that may not exceed 134 mills and allows the voters of a county to refer the question of consolidating the levies to a vote of the qualified electors of the county. (Advisory Commission on Intergovernmental Relations)

House Bill No. 1025 - State Aid Distribution Fund Formula Revision. This bill revises the state aid distribution formula for cities and counties to account for population changes resulting from the 2000 Federal Census. (Advisory Commission on Intergovernmental Relations)

House Bill No. 1026 - Transgenic Wheat Board. This bill requires the creation of a transgenic wheat board. (Agriculture Committee)

House Bill No. 1027 - Veterans Home Admission Requirements. This bill changes the residency requirement for a veteran to be eligible for admission to the Veterans Home from one year to 30 days. (Budget Committee on Government Administration)

House Bill No. 1028 - Veterans Home Admission Requirements for Spouses of Veterans. This bill changes the requirements for a spouse or surviving spouse of a veteran to be eligible for admission to the Veterans Home. The bill reduces the number of years the spouse or surviving spouse must be married to a veteran from five years to one year and removes the requirement that the spouse or surviving spouse be at least 45 years old. (Budget Committee on Government Administration)

House Bill No. 1029 - Veterans Home Revenue. This bill requires a veteran's service-connected compensation to be included in the veteran's contribution to the cost of care at the Veterans Home. (Budget Committee on Government Administration)

House Bill No. 1030 - Veterans Home Study - Strategic Plan. This bill provides for a Legislative Council study of the future role of the Veterans Home, including the development of a strategic plan for the operations of the home and the implementation of the recommendations included in the State Auditor's performance audit. The bill appropriates \$30,000 from the general fund to the Legislative Council for hiring a consultant to assist in the review of the future role of the Veterans Home and the development of a strategic plan for the Veterans Home. (Budget Committee on Government Administration)

House Bill No. 1031 - Department of Transportation Cooperative Agreements. This bill authorizes the director of the Department of Transportation to enter agreements with counties or cities for the cooperative or joint administration of an activity that will enhance the

efficiency and effectiveness of the state highway system. (Budget Committee on Government Administration)

House Bill No. 1032 - Employee Recruitment and Retention Program. This bill continues the employee recruitment and retention bonus pilot program through June 30, 2005. (Budget Committee on Government Services)

House Bill No. 1033 - High School Graduation Requirement. This bill establishes 21 units as the minimum needed for high school graduation. (Education Committee)

House Bill No. 1034 - School Board Plan Requirement. This bill requires a school board to consider the effects of demographics and to prepare a report that addresses potential changes in academic, athletic, and extracurricular programs; potential staff changes; potential building changes, including repairs, remodeling, new construction, and closure; and potential taxation changes in the ensuing 5, 10, and 20 years. (Education Committee)

House Bill No. 1035 - Revised Uniform Adoption Act. This bill defines "abandonment," "department," "identifying information," "investigation," and "stepparent"; provides that a petition for adoption and a report filed by the petitioner must state that the petitioner's expenses were reasonable, and gives guidance to what types of fees may be reasonable or unreasonable; requires a court to make a finding as to the reasonableness of fees paid by the petitioner; clarifies the residency requirements as they apply to various adoption situations; provides that a reasonable fee may be charged for furnishing nonidentifying information; clarifies that identifying and nonidentifying information may be shared between consenting parties to the adoption; removes the search prohibition of birth parents and birth siblings in the case of involuntary adoptions; provides that an adult child of a deceased adopted individual may initiate a search for identifying and nonidentifying information; provides that a nonconsenting party may not stop the disclosure of information between consenting individuals; provides that the Department of Human Services may share adoption information with an Indian tribe to determine the eligibility of the adopted individual for enrollment in an Indian tribe; and removes the 10-day withdrawal period for relinquishment of a birth parent's parental rights. (Family Law Committee)

House Bill No. 1036 - Child Relinquishment to Identified Adoptive Parents. This bill provides that a report filed by a petitioner may reflect that reasonable fees were paid, requires a court to make a finding as to the reasonableness of fees paid, and extends the time for filing of a petition for adoption from three months to six months. (Family Law Committee)

House Bill No. 1037 - Child-placing Agency Licensure. This bill removes the current annual child-placing agency licensure requirement to allow for a two-year license for those agencies that are in good standing and that also have an established history in the state; codifies the current practice of allowing a child-placing agency to consider all criminal background information when making a recommendation in a home study report; makes the procedures used in foster care placements consistent with procedures used in adoption placements; codifies the current Department of Human Services requirement that fees charged by a child-placing agency must be related to documented expenses of the agency; provides that a child-placing agency license may be revoked for violation of North Dakota Century Code Chapter 50-12; adds permanent guardianship to the class of guardianships that require that the Department of Human Services be notified if the guardianship involves bringing the child into the state for the guardianship; and provides that the child-placing agency licensure requirements extend to facilitator agencies that maintain lists of prospective adoptive parents and birth parents to make matches for a fee. (Family Law Committee)

House Bill No. 1038 - Privacy of Financial Information. This bill provides that a customer is protected by the state's financial privacy law, regardless of the state or residence or domicile and that the state's financial privacy laws apply to financial institutions that are physically located in the state. The bill also provides for incorporation into the state's financial privacy law the federal Financial Services Modernization Act of 1999, also known as the Gramm-Leach-Bliley Act, exception provisions of Section 502(e)(1) and (2), allowing for sharing of customer information as necessary to effect, administer, or enforce a transaction that is requested or otherwise authorized by the customer; in connection with servicing or processing a financial product or financial service that is requested or otherwise authorized by the customer; in connection with maintaining or servicing the customer's account with the financial institution; in connection with maintaining or servicing the customer's account with another person as part of a private label credit card program or as part of some other extension of credit on behalf of that other person; or at the direction or with the consent of the customer. (Family Law Committee)

House Bill No. 1039 - Higher Education Special Funds Continuing Appropriation. This bill provides for the continuation of the continuing appropriation of higher education institutions' special revenue funds, including tuition. (Higher Education Committee)

House Bill No. 1040 - University System's Unspent General Fund Appropriations. This bill provides for the continuation of the University System's authority to carry over at the end of the biennium unspent general fund appropriations. (Higher Education Committee)

House Bill No. 1041 - University System Budget Request and Appropriation. This bill continues the

requirement that the budget request for the University System 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 the requirement that the appropriation for the University System include block grants for a base funding appropriation and for an initiative funding appropriation and an appropriation for asset funding. (Higher Education Committee)

House Bill No. 1042 - University System Performance and Accountability Report. This bill requires the University System performance and accountability report to include an executive summary and specific information regarding education excellence, economic development, student access, student affordability, and financial operations. (Higher Education Committee)

House Bill No. 1043 - Information Technology Department Authority. This bill changes the responsibility of establishing a statewide forms management program from the Office of Management and Budget to the Information Technology Department; allows the department to purchase, finance the purchase, or lease equipment, software, or implementation services only to the extent the purchase amount does not exceed 10 percent of the appropriation for the department for that biennium; changes the due date for information technology plans from March 15 to July 15; and abolishes the State Information Technology Advisory Committee. (Information Technology Committee)

House Bill No. 1044 - Indigent Defense Contracts. This bill transfers from the judicial branch to the Office of Administrative Hearings the responsibility of contracting with and assigning attorneys to provide indigent defense services. (Judiciary A Committee)

House Bill No. 1045 - Indigent Defense Costs. This bill provides that the state rather than the county is responsible for paying for the costs of providing indigent defense for mental illness commitment proceedings, sexual predator commitment proceedings, and for guardian ad litem costs. (Judiciary A Committee)

House Bill No. 1046 - Nighttime Speed Limit. This bill removes the nighttime speed limit on paved two-lane highways resulting in a 65-mile-an-hour speed limit. (Judiciary B Committee)

House Bill No. 1047 - Speed Limit Fee. This bill establishes a five dollar fee for each mile per hour over the speed limit. (Judiciary B Committee)

House Bill No. 1048 - Testing of Guides and Outfitters. This bill requires guides and outfitters to be tested on state and federal laws on the hunting of wild game. (Judiciary B Committee)

House Bill No. 1049 - Records of Guides and Outfitters. This bill requires the director of the Game and Fish Department to keep proprietary information collected from guides and outfitters confidential. (Judiciary B Committee)

House Bill No. 1050 - Licensing of Guides and Outfitters. This bill provides for the comprehensive licensing of guides and outfitters by the department. (Judiciary B Committee)

House Bill No. 1051 - Audit Report Confidentiality.

This bill provides that draft audit reports are confidential and exempt from open records requirements but a state agency may review the audit recommendations before the audit report is made public. (Legislative Audit and Fiscal Review Committee)

House Bill No. 1052 - Performance Assurance

Plan Expenditures. This bill provides for the expenditure of funds collected by the Public Service Commission under the performance assurance plan with the regional Bell operating company. (Regulatory Reform Review Commission)

House Bill No. 1053 - Regulatory Reform Review

Commission. This bill extends the duration of the Regulatory Reform Review Commission to 2005. (Regulatory Reform Review Commission)

House Bill No. 1054 - Homestead Credit Eligibility

Revision. This bill revises eligibility for the homestead property tax credit based on five income categories with declining benefits from the federal poverty level to 140 percent of the federal poverty level. (Taxation Committee)

House Bill No. 1055 - Agricultural Property

Assessment Formula Effective Tax Rate Inclusion. This bill incorporates an effective tax rate calculation in

the capitalization rate used for valuation of agricultural property. The bill phases in use of an effective tax rate over four years. (Taxation Committee)

House Concurrent Resolution No. 3001 - Block Grant Hearings. This resolution authorizes the Budget Section to hold legislative hearings required for receipt of federal block grant funds. (Budget Section)

House Concurrent Resolution No. 3002 - Impact on Social Services of Loss of Tax Revenues Study. This resolution provides for a Legislative Council study of loss of tax revenues from flooded property and from previously taxable property that is purchased by tax-exempt entities and of the impact of the tax status on the ability of local communities to provide social services. (Family Law Committee)

House Concurrent Resolution No. 3003 - Social Services Funding Study. This resolution provides for a Legislative Council study of state and local funding obligations for social services. (Family Law Committee)

House Concurrent Resolution No. 3004 - Indigent Defense Study. This resolution provides for a Legislative Council study of the state's method of providing legal representation for indigent persons and the feasibility and desirability of establishing a public defender system. (Judiciary A Committee)

SENATE

Senate Bill No. 2027 - Ethanol Mandate. This bill requires that all gasoline having an octane rating of 87 and offered for sale in this state be blended with ethanol at the rate of 10 percent. (Agriculture Committee)

Senate Bill No. 2028 - Racing Commission Fees and Fines. This bill provides that any money collected by the Racing Commission from license fees and fines be deposited in the Racing Commission operating fund rather than the general fund and, subject to legislative appropriation, be spent for operating costs of the commission. (Budget Committee on Government Administration)

Senate Bill No. 2029 - Pilot Project for Health Insurance Mandates. This bill provides that any health insurance coverage mandate approved by the Legislative Assembly only applies to the public employees group health insurance program for a period of two years during which time the Public Employees Retirement System is to evaluate the mandate's costs and benefits and prepare a report for consideration by the next Legislative Assembly in determining if the mandate should be allowed to expire or be expanded to all insurers. (Budget Committee on Health Care)

Senate Bill No. 2030 - Department of Commerce Workforce Web Site Fee Use. This bill allows the Department of Commerce to retain any money received as subscriptions, commissions, or fees from the department's career guidance and job opportunities Internet web site. (Commerce Committee)

Senate Bill No. 2031 - High School Course Offerings. This bill broadens the number of courses that a high school must make available to its students by requiring one unit of English, mathematics, science, and social studies, each of which meets or exceeds the state content standards, at each grade level from 9 through 12; one-half unit of health and one-half unit of physical education, each of which meets or exceeds the state content standards, at each grade level from 9 through 12; two units of music, each of which meet or exceed the state content standards; three units of the same foreign language, each of which meet or exceed the state content standards; and 24 units of elective courses. (Education Committee)

Senate Bill No. 2032 - Superintendent of Public Instruction Data Envelopment Analysis Project. This bill appropriates \$50,000 to the Superintendent of Public Instruction for completion of the data envelopment analysis project. (Education Committee)

Senate Bill No. 2033 - Peace and Correctional Officer Retirement. This bill includes peace officers and correctional officers in the National Guard retirement plan. (Employee Benefits Programs Committee)

Senate Bill No. 2034 - Uniform Parentage Act. This bill changes the terms "natural mother," "natural father," and "natural parent" to "biological mother," "biological father," and "biological parent." (Family Law Committee)

Senate Bill No. 2035 - Paternity Registry. This bill creates a paternity registry in the State Department of Health Office of Statistical Services. (Family Law Committee)

Senate Bill No. 2036 - Adoption of Children With Special Needs. This bill broadens the class of children eligible for certification as a special needs adoption, by including children who are at high risk for a physical, a mental, or an emotional disability. (Family Law Committee)

Senate Bill No. 2037 - Electronically Printed Credit Card Receipts. This bill limits the credit card number information that may be included on an electronically printed credit card receipt. The bill would become operative on January 1, 2004, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions which is first put into use after December 31, 2003, and would become operative on January 1, 2007, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions which is first put into use before January 1, 2004. (Family Law Committee)

Senate Bill No. 2038 - Security-Related Records. This bill provides that any portion of a record containing plans, passwords, combinations, or other security-related data used to protect electronic information and government property and to prevent access to computers, computer systems, or telecommunications networks is exempt from open records requirements. (Information Technology Committee)

Senate Bill No. 2039 - Information Technology Policies, Standards, and Guidelines. This bill provides that the policies, standards, and guidelines adopted by the Information Technology Department are not considered rules under the Administrative Agencies Practice Act. (Information Technology Committee)

Senate Bill No. 2040 - Educational Technology Council and the Division of Independent Study. This bill provides necessary changes relating to the Educational Technology Council as the governing entity of the Division of Independent Study. (Information Technology Committee)

Senate Bill No. 2041 - Criminal Justice Information Sharing Initiative. This bill establishes a criminal justice information sharing board. The bill increases the fee for record checks from \$20 to \$25; provides that 80 percent of all fees collected must be deposited in a criminal justice information sharing fund that, subject to legislative appropriation, is available to the Information Technology Department for criminal justice information sharing activities; and provides that the remaining 20 percent of the fees must be deposited in the Attorney General's operating fund. The bill also provides that \$10 of the \$25 fee for a concealed weapons license must be deposited in the criminal justice information sharing fund instead of the general fund. (Information Technology Committee)

Senate Bill No. 2042 - Statewide Information Technology Network Use. This bill provides that higher education institutions may not incur costs for the services provided to others when the services are provided over institution telecommunications infrastructure. The bill also provides that the private sector may be allowed use of kindergarten through grade 12 entities' and higher education institutions' interactive videoconferencing services if videoconferencing services are not available from the private sector providers, the offering of videoconferencing services would not inhibit future private sector service, and educational and governmental users are given priority in the use of the videoconferencing services. (Information Technology Committee)

Senate Bill No. 2043 - Restitution Collection Responsibility. This bill provides that the county and state offices performing restitution collection and enforcement activities as of April 1, 2001, are to continue to perform those activities. (Judiciary A Committee)

Senate Bill No. 2044 - Restitution Costs. This bill requires a court, when ordering restitution in insufficient funds check cases, to impose as costs the greater of the sum of \$10 or 25 percent of the amount of restitution ordered and to provide that those costs are to be used by the state's attorney or clerk of district court to offset operating expenses. (Judiciary A Committee)

Senate Bill No. 2045 - Mental Illness Proceedings. This bill changes from seven to four the number of days within which a preliminary hearing or a treatment hearing is to be held. (Judiciary A Committee)

Senate Bill No. 2046 - Technical Corrections Act. This bill eliminates inaccurate or obsolete name and statutory references or superfluous language in the Century Code. (Judiciary A Committee)

Senate Bill No. 2047 - Special Needs Trusts. This bill allows for the formation of self-settled special needs trusts and third-party special needs trusts. (Judiciary B Committee)

Senate Bill No. 2048 - Total Hunting Pressure Nonresident Cap. This bill limits nonresident waterfowl hunters based on total hunting pressure. (Judiciary B Committee)

Senate Bill No. 2049 - Fixed Nonresident Hunting Cap. This bill limits nonresident waterfowl hunters through two consecutive 10-day blocks with a limit of 10,000 hunters per block. (Judiciary B Committee)

Senate Bill No. 2050 - Receipt of Bills by the Governor. This bill requires the Governor to accept delivery of bills passed by the Legislative Assembly and presented to the Governor during regular business hours. (Legislative Management Committee)

Senate Bill No. 2051 - Organizational Session Agenda. This bill updates the statutory requirements for the organizational session agenda to recognize current practices of electing leaders before the organizational session convenes and to recognize that all procedural committees are appointed and that some begin work during the organizational session. (Legislative Management Committee)

Senate Bill No. 2052 - City Flood Control Special Assessments on State Lands. This bill allows imposition of city flood control special assessments against private commercial structures on state land. (Taxation Committee)

Senate Bill No. 2053 - Special Assessment Cost Estimate Terminology. This bill provides for uniform use of phrases in special assessment laws regarding "probable cost of the work" and "probable cost of the improvement." The bill provides that cost of the work refers to construction costs and cost of the improvement refers to construction costs, costs of extra work, fees, publications, and other associated expenses. (Taxation Committee)

Senate Bill No. 2054 - Corporate Income Tax Flat Rate and Reduction. This bill eliminates the federal income tax deduction for state corporate income tax purposes and replaces existing graduated corporate income tax rates with a corporate income tax flat rate of 6.84 percent. The bill provides a corporate income tax flat rate of 9.9 percent for corporations filing under the water's edge election. (Taxation Committee)

Senate Concurrent Resolution No. 4001 - Human Service Center Funding Study. This resolution provides for a Legislative Council study of the feasibility and desirability of allowing human service centers additional funding flexibility. (Budget Committee on Government Administration)

Senate Concurrent Resolution No. 4002 - Elk Depredation. This resolution urges Congress to fund the cost of depredation, personal injury damage, and property damage caused by elk escaping from the Theodore Roosevelt National Park. (Judiciary B Committee)