REPORT

OF THE

NORTH DAKOTA LEGISLATIVE COUNCIL

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

FIFTY-NINTH LEGISLATIVE ASSEMBLY
2005

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January 4, 2005

Honorable John Hoeven
Governor of North Dakota

Members, 59th Legislative
Assembly of North Dakota

I have the honor to transmit the Legislative Council's report and recommendations of 23 interim committees and the Advisory Commission on Intergovernmental Relations.

Major recommendations include creation of the Commission on Legal Counsel for Indigents; prohibiting smoking in most workplaces; the modification of no-fault automobile insurance, including cost-containment provisions; continuation of flexibility in University System financial management, excluding certain Information Technology Department standards and guidelines from the Administrative Agencies Practice Act; the establishment of a statewide information technology improvements revolving fund for projects providing improvements in the efficiency of state government services or information technology projects involving multiple state entities; economic development and business climate proposals resulting from the Primary Sector Business Congress; bringing North Dakota into compliance with the Streamlined Sales and Use Tax Agreement; the creation of an advisory commission on the No Child Left Behind Act; changes to the formula for determining unemployment compensation tax rates to shift greater responsibility to negative balance employers; consolidation of county general fund mill levies; creation of a government performance and accountability system; and steps to assist nursing home compliance with the Life Safety Code.

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,

Bob Stenehjem

Senator Bob Stenehjem
Chairman
North Dakota Legislative Council

BS/JFB

HISTORY AND FUNCTIONS OF THE NORTH DAKOTA LEGISLATIVE COUNCIL

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 pri2marily 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.

THE NEED FOR A LEGISLATIVE SERVICE AGENCY

Nearly all states have a legislative 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 today while remaining a part-time citizen legislature that meets for a limited number of days every other year.

COMPOSITION OF THE COUNCIL

The Legislative Council by statute consists of 17 legislators, including the majority and minority leaders of both houses and the Speaker of the House. The Speaker appoints six other representatives, three 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 four 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 10 majority party members and 7 minority party members and is served by a staff of attorneys, accountants, researchers, and auxiliary personnel who are hired and who serve on a strictly nonpartisan basis.

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, Employee Benefits Programs Committee, Information Technology Committee, and 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 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.

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, the creation of the Department of Commerce, 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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TRANSPORTATION COMMITTEE

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Staff: Timothy J. Dawson

SUMMARY
BRIEFLY - THIS REPORT SAYS

ADMINISTRATIVE RULES

The Council reviewed all state administrative rulemaking actions from December 2002 through November 2004, covering 4,084 pages of rules. The Council did not void any agency rules. The Council approved repeal of obsolete rules as requested by Workforce Safety and Insurance, the Department of Human Services, the Superintendent of Public Instruction, and the Securities Commissioner. The Council agreed on rules amendments with the Department of Human Services, Division of Community Services, Real Estate Appraiser Qualifications and Ethics Board, Superintendent of Public Instruction, State Department of Health, and Board of Nursing. The Council studied new requirements for agency analysis of rules affecting small entities and found that agencies are able to comply with these requirements.

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 recommends House Bill No. 1025 to revise the consolidated county general fund levy option by removing from the consolidated general fund the specific mill levies for the industrial development organization, county parks and recreation, library fund, weed board and weed control, and weather modification; decreasing the maximum general fund levy from 134 to 118 mills; and removing the general fund levy increase limitations that are based on the consumer price index.

The Council recommends House Bill No. 1026 to decrease from approximately five years to approximately three years the period of time in which foreclosure will take place for delinquent property taxes.

The Council recommends Senate Bill No. 2024 to remove the June 30, 2005, expiration date for the document preservation fund and to continue the additional fees imposed for the purpose of funding the document preservation fund.

The Council received reports regarding motor vehicle branch offices, sheriff service of process, emergency preparedness, and wind turbine siting.

BUDGET COMMITTEE ON GOVERNMENT SERVICES

The Council studied the long-term needs of state inmates and received reports from the Department of Corrections and Rehabilitation and the Dakota Women's Correctional Rehabilitation Center regarding the status of housing state female inmates at the women's prison facility in New England. The Council encourages the Department of Corrections and Rehabilitation to request funds from the preliminary planning revolving fund to determine the cost and specifications relating to the replacement of the east cellhouse at the State Penitentiary. The Council received information on sentencing commissions, the Governor's Task Force on Violent and Sexual Offenders, and the effectiveness of alternatives to incarceration.

The Council recommends the Department of Corrections and Rehabilitation obtain two land appraisals for the land the department owns at the Missouri River Correctional Center, which is the site for a proposed riverbank stabilization project.

The Council studied the needs of individuals with mental illness, drug and alcohol addictions, and physical or developmental disabilities and received reports from the Department of Human Services and the Mental Health Association in North Dakota.

The Council received a report regarding the history of 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 the nursing home survey process, including a review of federal, state, and local agency procedures and requirements that result in additional costs, duplicated procedures, and added regulations for nursing homes. The Council encourages the State Department of Health to review Life Safety Code inspection procedures and provide options, within available resources, to the 59th Legislative Assembly for the State Department of Health to provide for any nursing home construction inspections necessary to ensure compliance with the Life Safety Code upon completion of a nursing home construction project.

The Council studied the value of the medical assistance program use of purchasing pools, preferred drug lists, and other pharmacy benefit management concepts; Medicaid payments, access to program services, and utilization; and the Medical Care Advisory Committee.

The Council received a report from the Insurance Commissioner regarding cost-benefit analyses conducted for legislative measures or amendments mandating health insurance coverage during the 58th Legislative Assembly. The Council accepted the Insurance Commissioner's recommendation to continue

to contract with Milliman USA to conduct a cost-benefit analysis during the 59th Legislative Assembly.

The Council received reports from the State Department of Health regarding the implementation of the community health grant program, the State Board of Nursing on its study of nursing educational requirements and the nursing shortage in this state and the implications for rural communities, and the Department of Human Services regarding enrollment statistics and costs associated with the children's health insurance program state plan.

BUDGET COMMITTEE ON HUMAN SERVICES

The Council studied human service center services. The Council recommends that legislative committees and Budget Section tour groups request information from each human service center in a standardized format reflecting information by major program of each human service center for the current and two previous bienniums.

The Council studied administrative costs of human services programs. The Council recommends House Concurrent Resolution No. 3001 providing for a Legislative Council study of the legal and enforcement issues relating to child support collections on Indian reservations. The Council also recommends Senate Bill No. 2025 requiring the Governor to obtain legislative approval before entering, renewing, amending, or extending any tribal-state gaming compact.

The Council received reports from the Department of Human Services regarding the development of a fee-for-service payment system for developmental disabilities services providers and from the Children's Services Coordinating Committee regarding the amount of "refinancing" funds generated and the uses of funds for the 2003-05 biennium.

BUDGET SECTION

The Council received reports from the Office of Management and Budget on the status of the state general fund, tobacco settlement proceeds, information technology funding reductions, irregularities in the fiscal practices of the state and recommendations for use of the money in the preliminary planning revolving fund, and from the Office of Management and Budget and the judicial branch on the status of state employee position reductions and related savings used to provide salary increases.

The Council received reports from the North Dakota University System regarding the status of the student internship program and from the State Board of Higher Education on the allocation of funds from appropriations for undesignated centers of excellence relating to economic development. The Council authorized the expenditure of additional other funds and federal funds for capital projects at Minot State University and the University of North Dakota.

The Council received reports from the Information Technology Department on the 2002-03 and 2003-04 annual reports, the information technology organizational and management studies, the information technology functional consolidation, server and operating system infrastructure, and the status of the ConnectND project.

The Council received reports from the Department of Human Services regarding the status of the medical assistance program, changes the department made to the Medicaid program, the status of the child care assistance program, transfers the department made between line items and between subdivisions in excess of $50,000, and the status of the sexual offender program.

The Council received reports from the Department of Commerce on the annual audits of renaissance fund organizations and the web site that provides career guidance and job opportunity services. The Council received reports from Workforce Safety and Insurance regarding the status of the risk management workers' compensation program and the building maintenance account.

The Council approved three land acquisition requests from the Game and Fish Department. The Council approved 69 of 70 requests considered for increased spending authority, transfers of spending authority, or increased full-time equivalent positions which were approved by the Emergency Commission. There were five requests authorized by the Emergency Commission to obtain funds from the state contingency fund.

The Council recommends Senate Concurrent Resolution No. 4001 to authorize the Budget Section to hold legislative hearings required for the receipt of federal block grant funds.

COMMERCE COMMITTEE

The Council studied the state's unemployment compensation system, including reserve guidelines for the unemployment trust fund, the system for ratesetting, treatment of positive balance and negative balance employers, and the feasibility and desirability of creating an unemployment compensation board. The Council recommends House Bill No. 1027 to revise the formula for determining unemployment compensation tax rates so that a proportionately greater responsibility is shifted to negative balance employers for that portion of the unemployment insurance tax burden, which represents the amount of revenue necessary to make due progress toward the unemployment insurance reserve fund solvency target. The Council recommends House Bill No. 1028 to establish a seven-member Job Service North Dakota Advisory Council, appointed by the Governor, for the purpose of advising Job Service North Dakota regarding issues relating to the operations, effectiveness, fairness, and efficiency of the unemployment insurance program.

The Council studied the impact of pending federal legislation that would significantly change the respective federal-state responsibilities and funding for workforce development, workforce training, public labor exchange, and unemployment insurance programs. The Council expresses its support for a request by Job Service North Dakota to the 59th Legislative Assembly for an appropriation of Reed Act funds adequate to fund procurement

planning studies, including development and issuance of a request for proposals relating to the costs and appropriate technology to replace the mainframe computer application used to process unemployment insurance claims and unemployment insurance tax reporting and payment, and expresses its support for a proposal by Job Service North Dakota to request an appropriation by the 59th Legislative Assembly of $250,000 of Reed Act funds to fund a pilot project on intensive reemployment actions designed to demonstrate whether those actions can have a significant effect on reducing expenditures from the unemployment insurance trust fund.

The Council studied consumer protection in regard to contractor competency and out-of-state contractors licensed in the state. The Council recommends Senate Bill No. 2026 to authorize the Secretary of State to request criminal history record information regarding an applicant for a contractor's license or contractor seeking to renew a license; to authorize the Attorney General to bring a complaint against a contractor under consumer fraud laws; and to specify additional grounds upon which the Secretary of State may deny an application for a contractor's license, refuse to renew a license, or revoke a license.

The Council received a report from the State Board of Agricultural Research and Education on its annual evaluation of research activities and expenditures. The Council received a report from Workforce Safety and Insurance regarding the safety and performance audit of the Roughrider Industries work programs and a report regarding the 2004 rate increase proposed by Workforce Safety and Insurance and projections for future rate adjustments.

CRIMINAL JUSTICE COMMITTEE

The Council studied the state's method of providing legal representation for indigent criminal defendants and the feasibility and desirability of establishing a public defender system. The Council recommends Senate Bill No. 2027 to establish the Commission on Legal Counsel for Indigents, to provide for a transition of indigent defense services from the Supreme Court to the commission, and to provide for an appropriation to fund the establishment of the commission.

The Council studied the need for guardianship services, standards and practices for guardians, and funding for programs for individuals with mental illness, vulnerable elderly adults, and individuals with traumatic brain injuries. The Council recommends Senate Bill No. 2028 to require the Department of Human Services to contract with an entity to create and coordinate a unified system for the provision of guardianship services to vulnerable adults who are ineligible for developmental disabilities case management services. The Council recommends Senate Bill No. 2029 to establish a procedure for the current guardian or any interested person to file a motion with the court for the appointment of a successor guardian. The Council recommends Senate Bill No. 2030 to provide for an annual reporting requirement for guardians and conservators and to require the State Court Administrator's office to develop and provide a form that may be used to fulfill reporting requirements.

The Council studied vulnerable adult abuse and neglect with an emphasis on whether certain individuals should be required to report suspected incidents of vulnerable adult abuse and neglect. The Council recommends House Bill No. 1029 to provide for an appropriation to the Department of Human Services for the purpose of implementing an education and awareness campaign to inform the public about vulnerable adult abuse and neglect, including the manner in which incidents of adult abuse, neglect, and exploitation may be reported.

The Council studied the methods for funding and providing law enforcement training in this state. The Council recommends Senate Bill No. 2031 to provide for an appropriation to the Highway Patrol for the purpose of providing training for law enforcement officers and other emergency services providers.

The Council studied the employment conditions issues contained in North Dakota Century Code Section 34-06-05, including those surroundings or conditions that may be detrimental to an employee's health or morals. The Council recommends House Bill No. 1030 to prohibit, with certain exceptions, smoking in places of public access, publicly owned buildings or offices, and nonpublic workplaces.

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.

ECONOMIC DEVELOPMENT COMMITTEE

The Council studied possible methods of growing North Dakota's population, including approaches to decreasing outmigration and increasing inmigration and reviewing how other states are dealing with related population issues. The basis of the study included recognition of problems related to the state's low rate of population growth, concerns relating to the changing demographics of the state's population, and the need to consider population centers from which to recruit individuals to move to the state.

The Council studied economic development efforts associated with and including establishment of a Red River Valley business and technology development zone and methods through which programs receiving funding from the United States Department of Agriculture rural economic area partnership, empowerment zone, enterprise community, and champion community programs can be enhanced.

The Council studied the state's business climate, including the creation of an index of key objective measurements that address the state's competitiveness with other states, the consideration of methods of creating business partnerships with North Dakota Indian tribes in order to increase primary sector business growth in the state, and active participation in the activities of the Primary Sector Business Congress. In conducting the study, the Legislative Council was directed to create a

Primary Sector Business Congress. The purpose of the congress was to assist in the business climate study, evaluate the impact of existing state economic development programs on primary sector businesses, identify methods to increase primary sector business job growth in the state, and prioritize for the Legislative Council the state's primary sector business economic development programs and initiatives.

The Council recommends Senate Bill No. 2032 to address a broad range of economic development and business climate issues and provide for additional business development studies.

The Council recommends House Bill No. 1031 to extend from 5 to 10 years the maximum length of the tax exemption a municipality may grant to a new and expanding business and to allow a new and expanding business to receive the tax exemption granted by the municipality regardless of whether the new and expanding business is located within an urban renewal development or renewal area.

The Council received annual reports from the Division of Community Services on renaissance zone progress, received annual reports from the Commissioner of Commerce regarding specified economic goals and associated benchmarks, and received a presentation from the State Board of Higher Education on definitions and eligibility criteria regarding its centers of excellence program relating to economic development.

EDUCATION COMMITTEE

The Council studied the manner in which elementary and secondary education is funded in this state and the feasibility and desirability of instituting alternative funding methods. The Council recommends House Bill No. 1032 to remove unrestricted federal revenue from the supplemental payment formula and House Bill No. 1033 to require that school district transportation payments be calculated using data envelopment analysis.

The Council studied school district data collection and reporting requirements.

The Council studied the criteria by which a student's school district of residence is established and whether that criteria correctly assigns both benefits and responsibilities to the appropriate school districts. The Council recommends Senate Bill No. 2033 to require an annual determination regarding the school district of residence for those students who are placed for noneducational reasons.

The Council received 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, student scores on recent statewide tests of reading and mathematics, changes to the teacher licensure process, data envelopment analysis, and the failure of school boards to meet a statutory threshold for increasing teacher compensation.

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. The council reviewed the Lignite Vision 21 program and the history and operation of the Territorial Integrity Act.

The Council studied the feasibility and desirability of enacting legislation to tax electric utility providers with a fair and uniform tax system.

The Council studied the issues related to wind energy development in this state, including wind energy development contract provisions, the potential economic benefits of wind energy development, the potential adverse impacts of wind energy development, consideration of transmission of electrical energy, and the impact on the electric industry of wind energy development.

EMERGENCY SERVICES COMMITTEE

The Council studied the state's emergency management system, the impact of federal emergency reorganization on the state's emergency operations plan, and the emergency management preparedness of state agencies and local governments.

The Council studied the state's public health unit infrastructure and the ability of the public health units to respond to public health issues, including disease and other physical health, environmental, and disaster-related issues. The Council recommends House Bill No. 1034 to authorize the Attorney General to provide legal counsel and legal opinions to local boards of health.

The Council received a report from State Radio on the operation of and any recommended changes in the emergency 911 telephone system standards and guidelines and received a report from the Public Safety Answering Points Coordinating Committee on city and county fees on telephone exchange access service and wireless service.

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 public employee health insurance benefits, including options for providing health insurance for state employees, availability of other health insurance plans, single versus family coverage, employee contributions, and unitization of premium rates for budgeting purposes.

GOVERNMENT PERFORMANCE AND ACCOUNTABILITY COMMITTEE

The Council studied state government performance and accountability practices. The Council recommends House Bill No. 1035 creating a Government Performance and Accountability system to be established and maintained by the Office of Management and Budget subject to the input and review of the Government Performance and Accountability Committee. The Council also recommends the Legislative Council chairman invite representatives of the National Conference of State Legislatures and the Urban Institute to conduct performance and accountability training for state agency personnel in North Dakota.

The Council monitored state agency compliance with legislative intent included in 2003-05 biennium appropriations, reviewed the status of major state agency and institution appropriations, and received reports on oil tax revenues.

HIGHER EDUCATION COMMITTEE

The Council studied higher education funding, including the expectations of the North Dakota University System in meeting the state's needs in the 21st century, the funding methodology needed to meet those expectations and needs, and the accountability system and reporting methodology for the University System. The Council recommends Senate Bill No. 2034 to provide for the continuation of the continuing appropriation of higher education institutions' special revenue funds, including tuition, through June 30, 2007; Senate Bill No. 2035 to continue the requirement that the budget request for the North Dakota 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 North Dakota University System include block grants for a base funding appropriation and for an initiative funding appropriation and an appropriation for asset funding through June 30, 2007; Senate Bill No. 2036 to provide for the continuation of the North Dakota University System's authority to carry over at the end of the biennium unspent general fund appropriations through June 30, 2007; and Senate Concurrent Resolution No. 4002 to provide for a Legislative Council study of the State Board of Higher Education performance and accountability measures.

INFORMATION TECHNOLOGY COMMITTEE

The Council studied the state's information technology organization and information technology management.

The Council received reports from the Chief Information Officer and representatives of the Information Technology Department regarding the department's business plan; the department's annual report; statewide information technology policies, standards, and guidelines; major information technology projects; the delivery of information technology services to agencies and the status of accumulated savings; the prioritization of major computer software projects; and budgeted and actual information technology equipment and software purchases.

The Council recommends Senate Bill No. 2037 to provide that the State Board of Higher Education is responsible for managing and regulating information technology planning and services for institutions under its control; to exclude certain policies, standards, and guidelines of the Information Technology Department from compliance with the Administrative Agencies Practice Act; to authorize the Information Technology Committee to receive and review information technology projects of the legislative branch; and to require the Information Technology Department to develop policies, standards, and guidelines using a process involving advice from state agencies and institutions and Senate Bill No. 2038 to establish a statewide information technology improvements revolving fund for information technology projects providing improvements in the efficiency of state government services or information technology projects involving multiple state agencies or institutions.

JUDICIAL PROCESS COMMITTEE

The Council studied the North Dakota open records statutes and the appropriateness of the penalties for an unauthorized disclosure of certain records. The Council recommends House Bill No. 1036 to make the penalty for the release of any confidential information consistent throughout the North Dakota Century Code by changing those sections of the Century Code which provide for a penalty that is different from the general penalty contained in North Dakota Century Code Section 12.1-13-01, a Class C felony.

The Council studied the doctrine of assumption of risk and the impact the reenactment of the doctrine would have on other state laws. It was the consensus of the Council that the state's modified comparative fault statute works well and does not need to be changed. It was also the consensus of the Council that the assumption of risk doctrine as a complete bar to recovery is not recommended and that the state should continue to use the modified comparative fault system.

The Council studied the leasing or renting of county court facilities by the state or other political subdivision. It was the consensus of the Council that the Legislative Assembly continue to monitor the assessment of the court administration fees under House Bill No. 1088 (2003), the revenue collection in the court facilities maintenance fund, and the awarding of grants by the Court Facilities Improvement Advisory Committee, as a means for addressing the county court facilities needs.

The Council reviewed the uniform Acts recommended by the North Dakota Commission on Uniform State Laws.

The Council recommends House Bill No. 1037 to make technical corrections to the North Dakota Century Code.

LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE

The Council received and accepted 152 audit reports prepared by the State Auditor's office and independent accounting firms. Among the audit reports accepted by the Council were five performance audits and evaluations--Driver and Vehicle Services, Department of Transportation; Administrative Committee on Veterans Affairs and the Department of Veterans Affairs; Workforce Safety and Insurance; Job Service North Dakota; and child support enforcement followup report. The Council requested the State Auditor's office to conduct an updated audit of the Racing Commission, including a detailed analysis of the racing promotion fund, while completing the next audit of the Attorney General's office. The Council approved the State Auditor's office request to hire a consultant to assist in conducting the Department of Corrections and Rehabilitation performance audit.

The Council received information regarding suggested guidelines for audits of state agencies; adjustments and corrections of tax distribution payments to political subdivisions; deficits incurred by agricultural commodity groups; the eight regional planning councils, the Department of Human Services accounts receivable writeoffs, and internal control procedures for child support; component units that are "blended into" state-reporting entities; accounts maintained within the North Dakota University System; the percentage of tuition and fees received by state colleges and universities used to fund academic costs; the status of the ConnectND project; turnback of unspent general fund appropriations for the 2001-03 biennium; and the selection of auditors for state agencies, boards, and institutions.

LEGISLATIVE MANAGEMENT COMMITTEE

The Council reviewed legislative rules and recommends printing the results of the roll, rather than the roll call, in the journal regarding election of legislative officers, allowing a member to vote on behalf of another member who has verbally announced instructions while in the chamber, and allowing bills and resolutions that receive a unanimous do not pass recommendation in committee to be placed on the consent calendar.

The Council approved the migration of legislators from Lotus Notes e-mail to Microsoft Exchange 2003 e-mail and from Lotus Smartsuite to Microsoft Office Standard. These are the initial steps to migrate from Lotus Notes software to Microsoft Exchange software as recommended by the Information Technology Department. The Council also authorized legislators to be provided with DSL or equivalent high-speed connections to the state network.

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

The Council reviewed employee positions and pay during the 2003 legislative session. For the 2005 legislative session, the council recommends employment of 35 Senate employees and 40 House employees--an increase of 1 Senate page and bill book clerk position. The Council also recommends a 5 percent increase in daily compensation for those employees.

The Council reviewed bids to provide secretarial, telephone message, and bill and journal room services to the Legislative Assembly and recommends accepting the bid by one contractor to provide these services during the 2005 legislative session.

The Council approved the agenda for the organizational session. The Council recommends Senate Bill No. 2039 to provide for the organizational session to convene on the first Monday in December rather than the first Tuesday after the first Monday.

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 7, and the Commissioner of Commerce is to report to the Industry, Business and Labor Committees on Monday, January 10.

The Council approved enhancements to the sound systems in the legislative chambers. The Council also approved replacement of the sound system in the Brynhild Haugland Room with a system providing additional microphone capacity, additional access points, and an enhanced media panel. The Council also approved replacing the folding chairs in the chambers and in Memorial Hall and the chairs used in the Brynhild Haugland Room.

NATURAL RESOURCES COMMITTEE

The Council studied the federal and state statutory and regulatory policies that discourage or prevent final bond release applications from being filed and Public Service Commission regulatory policies that could be implemented to encourage flexibility in proving reclamation success and reducing administrative and regulatory burdens necessary for bond release applications and actions being undertaken by the mining companies to achieve final bond release. The Council recommends Senate Bill No. 2040 to delete the requirements that a request for bond release be published in other daily newspapers of general circulation in the locality of the surface coal mining operation in addition to the official newspaper of the county and that subsurface owners within the permitted area proposed for bond release be notified.

The Council studied proposed legislation permitting the Game and Fish Department to coordinate with game and fish programs conducted by the tribal governments of the federally recognized Indian tribes in North Dakota. The Council recommends Senate Bill No. 2041 to provide that properly tagged game birds legally taken on Indian trust lands may be possessed, transported, or shipped in state and that properly tagged big game legally taken on Indian trust land may be transported, shipped, or possessed within the state.

The Council received information concerning the Garrison Diversion Unit Project, Devils Lake, and Northwest Area Water Supply Project.

NO CHILD LEFT BEHIND COMMITTEE

The Council studied the No Child Left Behind Act of 2001, the direct and indirect impact of the Act on the school districts of this state, and the financial impact of the Act on the budget of this state and on the taxpayers of this state. The Council recommends House Bill No. 1038 to create a 13-member Advisory Commission on the No Child Left Behind Act and to continue the interim No Child Left Behind Committee and Senate Bill No. 2042 to penalize parents who fail to ensure their children's attendance and to cancel the driver's license of a truant student under age 16.

The committee received information from the Superintendent of Public Instruction regarding the estimated costs that are likely to be incurred by this state during the ensuing eight years to meet the requirements of the No Child Left Behind Act of 2001.

PUBLIC SERVICES COMMITTEE

The Council studied laws requiring a surety bond, the state bonding fund, the availability of private surety bonds, and the appropriateness and necessity of bonds. The Council recommends Senate Bill No. 2043 to create an application procedure under the state bonding fund. The bill requires the coverage applied for to be based on the amount of money and property handled and the opportunity for defalcation. The bill limits claims to two years before billing a claim. The Council recommends House Bill No. 1039 to allow auctioneers and auction clerks the option of providing errors and omissions and liability insurance instead of a bond.

The Council studied the feasibility and desirability of transferring agriculturally related inspection and standards functions performed by various state agencies to the Public Service Commission.

The Council studied the provisions of North Dakota Century Code Title 4 which relate to the powers and duties of the Seed Commissioner and the State Seed Department. The Council recommends Senate Bill No. 2044 to clarify state seed law. The bill mainly provides for housekeeping changes except for the provision of a per diem for Seed Commission members; the power of the Seed Commissioner to employ, appoint, or contract with agents; and longer periods between germination tests for certain seed.

TAXATION COMMITTEE

The Council studied individual and corporate income taxes. The Council recommends House Bill No. 1040 to require adding back out-of-state bonds' interest earnings to individual taxable income on Form ND-1, to apply only to bonds purchased after December 31, 2005. The Council recommends House Bill No. 1041 to allow a claim of an individual income tax refund for taxable years 2001 and 2002 for a nonresident whose military income was used to determine the initial tax on North Dakota taxable income. The bill allows the refund claim to be filed until April 15, 2006. The Council recommends Senate Bill No. 2045 to require passthrough entities such as S corporations, partnerships, trusts, limited liability companies, and limited liability partnerships to choose between the options of filing a combined report in North Dakota or withholding North Dakota income taxes on distributions to nonresident members of the passthrough entity. The Council recommends Senate Bill No. 2046 to require inclusion of corporations in a unitary relationship and incorporated in a tax haven as part of a water's edge corporate income tax filing election.

The Council studied North Dakota's compliance with the Streamlined Sales and Use Tax Agreement. The Council recommends House Bill No. 1042 to provide for North Dakota membership on the Streamlined Sales Tax Governing Board, consisting of two members of the House of Representatives and two members of the Senate appointed by the Legislative Council chairman. The Council recommends House Bill No. 1043 to bring North Dakota into full compliance with the Streamlined Sales and Use Tax Agreement.

The Council studied tax preferences under all tax types.

TRANSPORTATION COMMITTEE

The Council studied the motor vehicle no-fault, underinsured motorist, and uninsured motorist insurance systems. The Council recommends Senate Bill No. 2047 no-fault automobile insurance. The bill, among other things, requires the vehicle to be in motion or have the injury caused by another vehicle; removes work loss, replacement services loss, survivors' income loss, and survivors' replacement services; removes charges for nonprescription drugs and experimental and medically unproven treatment from coverage; and removes diagnostic testing from the medical expenses used to determine if there is a serious injury.

The Council studied the sale and lease of railroad rights of way.

The Council studied alternative methods for recording and discharging a lien on a motor vehicle. The Council recommends House Bill No. 1044 to create an electronic lien notification procedure for motor vehicles.

The Council studied the requirements for registration and licensing of snowmobile, all-terrain vehicle, low-speed vehicle, and motorcycle dealers.

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, 28-32-18, and 28-32-18.1. 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.

The Legislative Council assigned to the Administrative Rules Committee a study directed by 2003 House Bill No. 1212 regarding the effects and operation of requiring agency consideration of the effect of proposed administrative rules on small businesses, organizations, and political subdivisions.

Committee members were Representatives William R. Devlin (Chairman), LeRoy G. Bernstein, Jeff Delzer, Duane DeKrey, Rod Froelich, Matthew M. Klein, Kim Koppelman, Jon O. Nelson, Dan J. Ruby, Sally M. Sandvig, Blair Thoreson, Alon Wieland, and Dwight Wrangham and Senators John M. Andrist, Dennis Bercier, April Fairfield, Tom Fischer, Layton Freborg, Jerry Klein, Gary A. Lee, and Rich Wardner.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2004. The Council accepted the report for submission to the 59th 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. 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.
6. The subject matter of the rules and the reasons for adopting the rules.
7. 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. If a regulatory analysis was prepared, a copy is to be provided to the committee.
8. Whether a regulatory analysis or economic impact statement of impact on small entities was prepared as required by NDCC Section 28-32-08.1. If a small entity impact assessment was prepared, a copy is to be provided to the committee.
9. Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09. If a constitutional takings assessment was prepared, a copy is to be provided to the committee.
10. 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 and a copy of the Governor's approval of the emergency status of the rules.

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

Current Rulemaking Statistics

The committee reviewed 2,306 rules sections and 4,085 pages of rules that were changed from December 2002 through November 2004. The number of sections affected was substantially more than the comparable amount and the number of pages of rules was more than double the comparable amount from the previous biennial period. Rules of the State Department of Health required for compliance with rules of the Environmental Protection Agency are extremely large in volume and will substantially influence the statistics for rulemaking activity in a rulemaking cycle. Much of the apparent increase in rulemaking activity appears to be attributable to environmental rules. 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
December 2002 - November 2004	2,306

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
December 2002 - November 2004	4,085

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 is required to 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.

Obsolete Rule Repeal

Under NDCC Section 28-32-18.1, an agency may amend or repeal a rule without complying with the normal requirements relating to adoption of administrative rules if the agency initiates the request to the committee, the agency provides notice to the regulated community of the time and place the committee will consider the request, and the agency and the Administrative Rules Committee agree the rule amendment or repeal eliminates a provision that is obsolete or no longer in compliance with law and that no detriment would result to the substantive rights of the regulated community.

Agency Rules Analysis

Under NDCC Section 28-32-08, an agency is required to issue a regulatory analysis of a proposed rule

if a request for the analysis is filed by the Governor or a member of the Legislative Assembly or the proposed rule is expected to have an impact on the regulated community in excess of $50,000. A regulatory analysis is required to address persons who will be affected by the proposed rule, economic impact, implementation and enforcement costs, and consideration of alternative methods for achieving the purposes of the proposed rule.

Under NDCC Section 28-32-09, an agency is required to prepare an assessment of constitutional takings implications of a proposed rule that may limit the use of private property. The agency must assess the likelihood that the proposed rule may result in a taking or regulatory taking, identify the purpose of the proposed rule, explain the necessity of the proposed rule to substantially advance the purpose of the rule, examine any alternative action that could achieve the agency's goals while reducing impact to private property owners, estimate potential cost to the government if a court determines that the rule constitutes a taking or regulatory taking, identify the source within the agency's budget for payment of compensation that might be ordered, and certify that the benefits of the proposed rule exceed the estimated compensation costs.

Passage of House Bill No. 1212 (2003) created NDCC Section 28-32-08.1, requiring agency analysis of rules affecting small entities. This section requires agency consideration of impact of proposed rules on small entities, including a small business, small nonprofit organization, or small political subdivision. The agency must consider methods of reducing impact of proposed rules on small entities, including establishing less stringent compliance or reporting requirements for small entities, establishing less stringent schedules or deadlines for compliance or reporting for small entities, consolidating or simplifying compliance or reporting requirements for small entities, establishing performance standards for small entities to replace design or operational standards required by the rule, and exemption of small entities from all or any part of the proposed rule. This section does not apply to rules mandated by federal law, to any occupational or professional licensing agency, or to 16 specifically listed agencies.

COMMITTEE ACTION ON RULES REVIEWED

Obsolete Rules Repeal

The committee approved a request by Workforce Safety and Insurance for repeal of a rule on employee staffing arrangements because the rule was superseded by 2003 legislation.

The committee approved a request by the Department of Human Services for repeal of a Medicaid rule relating to treatment of annuities in determining Medicaid eligibility, which was in conflict with 2003 legislation.

The committee approved a request by the Department of Human Services for repeal of transitional living services for foster care children rules that duplicate federal law.

The committee approved a request by the Superintendent of Public Instruction to repeal rules relating to teacher qualifications because the authority over those qualifications was transferred to the Education Standards and Practices Board.

The committee approved a request by the Securities Commissioner for repeal of securities rules because the substance of the rules has been incorporated in statutory provisions.

Rules Amendments by Committee Approval

Department of Human Services

The Department of Human Services adopted a rule extending the noncitizen immigrant eligibility waiting period for temporary assistance for needy families from five to seven years. The department pointed out that this extension would not comply with federal standards, and the committee agreed with the department on a rule amendment to change the noncitizen immigrant eligibility waiting period back to five years.

With regard to rules adopted by the Department of Human Services, the committee agreed with the department on an amendment to Medicaid rules to make clear that a health care provider has three business days, rather than three calendar days, to secure prior approval of Medicaid coverage for ambulatory behavioral health care and an amendment to allow Medicaid nursing home reimbursement as direct care costs for salaries and benefits to nursing home employees with developmental disabilities or cognitive impairments who provide services under the supervision of a registered nurse.

The Department of Human Services adopted rules requiring prior authorization for Medicaid coverage of prescription drugs. In 2001, the Legislative Assembly defeated House Bill No. 1116, which would have required prior authorization for prescription drugs. After discussion of the issue, the committee agreed with the Department of Human Services on an amendment to the Medicaid rules to provide authority for a prescriber to continue use of a prescription drug for a patient by signing a statement that the prescriber has considered generic or other alternatives and has determined that continuing current therapy is in the best interest for successful medical management of the patient.

Division of Community Services

The committee agreed with the Division of Community Services on amendments to the State Building Code rules to conform with 2003 statutory changes approved by the Legislative Assembly relating to modular structure participation in the third-party inspections program, annual certification processes for manufacturers of modular structures, and local amendments to the State Building Code.

Real Estate Appraiser Qualifications and Ethics Board

The Real Estate Appraiser Qualifications and Ethics Board adopted a rule that would have allowed anonymous complaints against licensees to be filed with the

board. The committee expressed concern that allowing anonymous complaints may overwhelm the board with an increase in complaints and that an appraiser would be reluctant to put the appraiser's name on a complaint if not required to do so. It was stated that anonymous complaints make investigations more difficult. After further consideration, the board agreed with the committee on an amendment to require a complainant to submit a signed, written statement describing the facts supporting the complaint. The amendment also allows the board to initiate and investigate a complaint on its own motion.

Superintendent of Public Instruction

The Superintendent of Public Instruction adopted rules governing teacher credential requirements. The committee pointed out an ambiguous provision in the credential requirements for teachers of mentally retarded individuals and, upon further review, the Department of Public Instruction identified a similar ambiguity in special education strategic credential requirements. The committee agreed with the Superintendent of Public Instruction on amendments to clarify that credentials for those professionals require 20 semester hours of credits taken from coursework in listed areas, including some coursework in each of the listed areas.

State Department of Health

The State Department of Health adopted rules governing emergency medical services providers. A representative of an air ambulance service provider expressed concerns to the committee with several aspects of the rules. After further discussion and consideration, the department agreed with the committee on further amendments to the rules to address the concerns and fulfill the legislative intent of House Bill No. 1202 (2001) regarding these issues. The amendments approved provide that basic life support air ambulance services may be available as needed and advanced life support air ambulance services must be available 24 hours a day and 7 days a week, except as limited by weather or aircraft maintenance or pilot duty limitations under Federal Aviation Administration regulations. The amendments approved also provide that for basic life support air ambulance service, the minimum number of personnel required is one primary care provider and for advanced life support air ambulance service, the minimum number of personnel required is one primary care provider, except when either the transferring or receiving physician believes the patient's status requires a minimum of two providers.

Board of Nursing

The Board of Nursing adopted rules governing nurse practice. After adoption of the rules, discussions with representatives of the State Board of Medical Examiners and the North Dakota Medical Association led the Board of Nursing to conclude that further amendments to the rules were necessary to address concerns of those groups. The Board of Nursing suggested and the committee approved further amendments to the rules to address concerns relating to the scope of practice of nurses to make clear that advanced practice registered nurses are not to act as independent practitioners of medicine.

Committee Voiding of Agency Rules

The committee did not void any agency rules in its 2003-04 rules review.

PROPOSED RULES IMPACT ON SMALL ENTITIES STUDY

The requirement of NDCC Section 28-32-08.1 relating to agency analysis of rules affecting small entities became effective for administrative rules adopted after July 31, 2003. The committee had the opportunity to review several small entity impact analyses prepared by agencies. The committee received no comments from small entities regarding small entity impact analyses prepared, or not prepared, by any agency. It appears that agencies were able to comply with the requirement and that no particular problems resulted from compliance with the new requirement. One agency pointed out that there is difficulty in interpretation regarding the requirement for consideration of performance standards for small entities to replace design or operational standards required in the proposed rule. Agency representatives said they are unable to determine the meaning of this requirement and would appreciate statutory clarification.

CONCLUSION

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

TABLE A

STATISTICAL SUMMARY OF RULEMAKING
December 2002 Through November 2004 Supplements 282 Through 305

Agency	Amend	Create	Supersede	Repeal	Special	Reserved	Total
State Board of Accountancy	9						9
Office of Management and Budget	106	90		8			204
Agriculture Commissioner	13						13
Attorney General		46					46
Department of Financial Institutions	7	8					15
State Board of Dental Examiners	10	1					11
State Board of Registration for Professional Engineers and Land Surveyors	28	17					45
State Department of Health	395	237		16	35	191	874
Industrial Commission	31	2					33
Insurance Commissioner	20	62		4			86
State Board of Animal Health	11	1					12
State Board of Medical Examiners	4			1			5
Board of Nursing	99	22		25			146
State Board of Examiners for Nursing Home Administrators	14	1		1			16
Board of Occupational Therapy Practice	8	1					9
Human Resource Management Services	9						9
Pesticide Control Board	14	13		1			28
State Board of Pharmacy	7	3					10
State Examining Committee for Physical Therapists	20			2			22
Department of Public Instruction	44	47		3			94
Education Standards and Practices Board	24	9					33
Public Service Commission	15	7		1			23
Real Estate Commission	6						6
Public Employees Retirement System	68	20		2			90
Secretary of State		8					8
Department of Human Services	202	19	8	10			239
Board of Social Work Examiners	9	3					12
Teachers' Fund for Retirement Board of Trustees	8	2					10
Board of Veterinary Medical Examiners	4	2					6
State Water Commission	11	3					14
Workforce Safety and Insurance	20	1					21
Office of Administrative Hearings	17	2					19
State Gaming Commission	62	1					63
Real Estate Appraiser Qualifications and Ethics Board	9			1			10
Department of Commerce		14					14
Peace Officer Standards and Training Board		51					51
Sections Affected	1,304	693	8	75	35	191	2,306
Grand Total All Sections							2,306

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.

North Dakota Century Code Section 54-35.2-01 establishes the membership of the commission: 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. Commission members were Representatives Scot Kelsh (Chairman) and Andrew Maragos; Senators Bill L. Bowman and Michael Polovitz; North Dakota League of Cities representatives Bob Frantsvog and Devra Smestad; North Dakota Association of Counties representatives Ron Anderson and Mike Montplaisir; North Dakota Township Officers Association representative Donny Malcomb; North Dakota Recreation and Park Association representative Randy Bina; North Dakota School Boards Association representative Bev Nielson; and Governor John Hoeven.

The commission submitted this report to the Legislative Council at the biennial meeting of the Council in November 2004. The Council accepted the report for submission to the 59th Legislative Assembly.

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 levy limitations 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, and the Legislative Assembly enacted that bill.

During the 2001-02 interim, the Advisory Commission on Intergovernmental Relations again addressed consolidation of mill levies. The commission recommended House Bill No. 1024, which consolidated several special county levies into the county general fund levy that may not exceed 134 mills and which allowed the voters of a county to refer the question of consolidating the levies to a vote of the qualified electors of the county. The Legislative Assembly enacted House Bill No. 1024 with amendments that limited increases in the number of mills levied by limiting mill levy increases to increases in the consumer price index.

Testimony and Commission Considerations

Park Districts

The commission received a report from a representative of the North Dakota Recreation and Park

Association regarding the status of the consolidation of park district mill levies. The consolidation of the mill levies is generally working well and allows for needed flexibility. Although some park and recreation districts have considered a dedicated mill for health insurance, generally the use of the general fund for funding health insurance works well. No legislative changes were suggested.

Counties

The commission received testimony that although 2003 House Bill No. 1024 amended NDCC Section 57-15-06.10 to allow counties the option of consolidating certain county mill levies, not a single county has used this option. Testimony indicated that the consolidation option has not been used, at least in part, because:

1. County auditors are uncertain how to implement a mill levy increase under the consumer price index provision under Section 57-15-06.10 because the section does not specify the date of the index intended to be used.
2. County auditors are concerned that the consolidated general fund growth provision is based on mills instead of dollars, thereby negatively impacting any county in which property valuation is decreasing.
3. County auditors are concerned because under Section 57-15-06.10, a consolidated general fund increase would be based on a one-year lookback; therefore, a county would have to be very cautious about lowering the consolidated mill levy because if an increase were desired at a later date, it may take years to increase the levies back to the level they were at before being lowered.
4. County auditors are concerned there may be problems associated with including in the consolidated general fund the levy for appointed boards, including the situation in which a board's authority does not mirror county boundaries.

In response to the issues raised by the county auditors, the North Dakota Association of Counties presented three alternative bill drafts to the commission. All three bill drafts changed the individual levies consolidated to create the single general fund levy of 118 mills by:

1. Removing the levies for the four appointed boards that separately certify their levies to the board of county commissioners:
   a. The county weed board, NDCC Sections 57-15-54 and 63-01.1-06.
   b. The weather modification board, NDCC Section 61-04.1-26.
   c. The county park board, NDCC Sections 11-28-06 and 57-15-06.9.
   d. The library board, NDCC Section 40-38-02.
2. Removing the industrial development organization levy, NDCC Section 11-11.1-06, which was intended to have been done in the original 2003 bill.
3. Including the handicapped programs and activities levy, NDCC Section 57-15-60, which was inadvertently left out of the original 2003 bill.

The three bill drafts proposed by the North Dakota Association of Counties differed in the approach to the future growth of a consolidated general fund.

1. The first version:
   a. Provided the consolidated general fund growth determination is based on dollars and not mills.
   b. Clarified the consumer price index would be that of the previous calendar year.
   c. Allowed for a three-year lookback rather than a single-year lookback.
2. The second version:
   a. Provided the consolidated general fund growth determination is based on dollars and not mills.
   b. Replaced the consumer price index growth provision with an 18 percent per year increase provision.
   c. Allowed for a three-year lookback rather than a single-year lookback.
3. The third version removed the growth limitation language and instead relied on the 118-mill cap.

The commission received testimony that the North Dakota Association of Counties preferred the third version, which removed the growth limitation; however, if the consolidation is to include a growth limitation, the association preferred the first version.

The commission received testimony from representatives of the North Dakota Farm Bureau in opposition to county consolidation of mill levies under NDCC Section 57-15-06.10 because this section allows for consolidation without first requiring a vote of county electors. Although Section 57-15-06.10(2) provides consolidation is subject to the right of referendum by the county electors, this only takes place after the county commissioners have made a determination to consolidate.

The North Dakota Farm Bureau perceived the consolidation law as an opportunity for county commissioners to raise taxes without a vote of the electors and proposed that NDCC Section 57-15-06.10 be amended to require a vote of the county electors before a county implements consolidation. County tax increase opportunities under Section 57-15-06.10 may include tax increases that may result from the consolidated 134-mill general fund maximum because no county is using the maximum of all of the consolidated levies, increases based on the consumer price index, and increases that may result due to increased property valuation.

Representatives of the North Dakota Farm Bureau opposed the three bill drafts proposed by the North Dakota Association of Counties. The general position of that organization was that the consolidation of county mill levy law allows for a potential tax increase without a vote of the people, a vote of the people should take place before a county changes to a consolidated mill levy system, levies for entities with boards should not be included in the consolidated general fund, current law relating to how a tax increase would take place is

problematic, and current law regarding reference to the consumer price index should be changed to reflect a date certain. In addition to the North Dakota Association of Counties proposed removal of the four boards' mill levies from the consolidated general fund, the North Dakota Farm Bureau supported also removing the mill levies affiliated with county historical work and county fairs.

The commission received testimony from a representative of the State Historical Society supporting removal of the county historical society mill levy from the consolidated general fund because removing the county historical society mill levy from the consolidated general fund would be a mechanism to stabilize funding for these county services. County historical societies take care of a variety of services that the state does not. Services offered through county historical societies include providing programs for schoolchildren, as well as providing economic development services.

The commission received testimony from a representative of the North Dakota Weed Control Association opposing inclusion of the county weed board levy in the consolidated general fund because if the weed board levy is consolidated into a county general fund, the weed board may be found ineligible for some state funds that require a three-mill levy. In 2003 the North Dakota Weed Control Association opposed the inclusion of the weed board levy in the county mill levy consolidation bill.

The commission received testimony from the State Librarian and representatives of local libraries supporting removal of the library board levy from the consolidated general fund because exempting the library board mill levy from the consolidated general fund will assist libraries in budgeting.

Following commission consideration of a bill draft based on the third version of the bill draft proposed by the North Dakota Association of Counties and discussions between representatives of the North Dakota Association of Counties and the North Dakota Farm Bureau, the North Dakota Farm Bureau proposed the following two amendments to the commission's bill draft:

1. Place the issue of consolidation on the ballot before a county action consolidates mill levies.
2. Within this consolidation vote, allow voters to establish a general fund mill levy cap.

Recommendation

The commission recommends House Bill No. 1025 to revise the county general fund levy under NDCC Section 57-15-06.10, removing from the consolidated general fund the specific mill levies for the industrial development organization, county parks and recreation, library fund, weed board and weed control, and weather modification; decreasing the maximum general fund levy from 134 to 118 mills; and removing the general fund levy increase limitations that are based on the consumer price index.

DELINQUENT PROPERTY TAXES

Testimony and Commission Considerations

The commission considered the issue of decreasing the time between failure to pay property taxes and foreclosure on a property tax lien. A representative of the Tax Commissioner's office outlined the foreclosure of tax lien process. The following example was provided:

January 1, 2004	2003 property taxes due
March 2, 2004	First installment of property taxes and annual special assessments become delinquent, 3 percent penalty added
May 1, 2004	3 percent penalty added
July 1, 2004	3 percent penalty added
October 15, 2004	3 percent penalty added
October 16, 2004	Second installment becomes delinquent, 6 percent penalty added
November 1-15, 2004	Notice of tax lien. Unless taxes, special assessments, penalty, interest, and costs are paid by October 1, 2008 (the fourth year following the year in which the taxes became delinquent), the county will foreclose on the tax lien and issue a tax deed to the county.
June 1, 2008	Notice of foreclosure of tax lien
October 1, 2008	Tax lien is foreclosed and tax lien is issued to county
November 3, 2008	Notice of sale posted in county auditor's office
November 8, 2008	Notice of sale published in official newspaper
November 18, 2008	Annual sale of land acquired by tax deed

The commission received testimony regarding how other states deal with delinquent property taxes. There are more than 150 different systems in the United States for collecting property taxes; therefore, it is difficult to accurately compare one state's system to another state's system. North Dakota's system differs significantly from the systems of neighboring states in that the North Dakota system provides for direct escheatment to the county. Data from a year 2000 report of the International Association of Assessing Officers indicates North Dakota has a 5 percent tax delinquency in a typical year, with 99 percent of property taxes ultimately being collected without foreclosure.

The commission received testimony that although the system for collection of delinquent property taxes is not necessarily broken, some people get into deep financial trouble when property taxes are delinquent and that allowing for almost five years of delinquency adds to this problem. A two-year decrease in the period for foreclosure would be simple; however, the actual implementation would be more complicated due to the order in which delinquent taxes become due.

The commission received testimony in support of decreasing the period of foreclosure for delinquent property taxes. Testimony indicated that the current law provides for an abnormally long period in which schools, counties, cities, and other local institutions are deprived of the timely use of tax dollars, thereby placing a greater

burden on those taxpayers who do pay their taxes in a timely manner.

The commission considered the issue of allowing for a short-term period of amnesty for interest and penalties to ease the implementation of a two-year decrease in the period for foreclosure. Although boards of county commissioners have some discretion in allowing for abatement of property taxes, interest, and penalties, this discretion has been interpreted narrowly and it would likely be necessary to put this authority in law. Testimony was received that special assessments make a big difference to city governments and the special assessments should be considered before any abatement of property tax is allowed.

Recommendation

The commission recommends House Bill No. 1026 to decrease from approximately five years to approximately three years the period of time in which foreclosure will take place for delinquent property taxes and also to allow a board of county commissioners to waive all or part of the penalties and interest on delinquent real estate taxes if the board determines the reduced period for foreclosure of tax liens creates a hardship for similarly situated taxpayers. The waiver of penalty and interest is effective through October 1, 2009, and the decrease in the period of foreclosure is effective for taxable years beginning after December 31, 2004, with the property tax proceedings relating to property taxes due or delinquent for any taxable year prior to 2005 subject to the provisions of law that are in effect on December 31, 2004.

DOCUMENT PRESERVATION FUND

Background

In 2001 the Legislative Assembly enacted Senate Bill No. 2173, which required county treasurers to establish a document preservation fund to receive recording fees. The bill provided that the revenue in the fund may be used only for contracting for and purchasing equipment and software for a document preservation, storage, and retrieval system; training employees to operate the system; maintaining and updating the system; and contracting for the offsite storage of microfilm or electronic duplicates of documents for the county recorder's office. The bill increased several fees collected by the recorder's office. The bill also provided that the document preservation fund and the additional fees imposed for the purpose of that fund expire on June 30, 2005.

Testimony and Commission Considerations

The commission received a brief summary of the history behind the enactment of 2001 Senate Bill No. 2173. Following the Red River Valley flood of 1997, a plan was developed and implemented to microfilm all real estate records in all 53 counties and to provide for storage of that microfilm at a secure offsite location. Following receipt of a $1.2 million Federal Emergency Management Agency grant to assist North Dakota counties in putting in place tools to ensure that valuable records can be replaced in the event of a disaster, counties needed additional funding to upgrade operations. Senate Bill No. 2173 provided this funding.

The commission received a request from representatives of the North Dakota County Recorders Association that the June 30, 2005, expiration of Senate Bill No. 2173 be removed. Testimony was received indicating the document preservation funds collected are being spent wisely and are providing counties with needed financial security in caring for county records. As of August 2003 approximately $1,174,689 had been deposited in the document preservation fund, with a portion of this money used to totally fund the offsite repository. Testimony was received that document preservation funds are necessary for counties to begin and continue the process of computerization, technology upgrades, and the ongoing process of microfilming and storing records offsite. The goals and accomplishments that rely on the continuation of the document preservation fund in order to be a continued success include:

1. Microfilming land records.
2. Creating an electronic repository.
3. Creating microfilm from digital records.
4. Creating a North Dakota recorders' web site.
5. Publishing land records data to the Internet.

Recommendation

The commission recommends Senate Bill No. 2024 to remove the June 30, 2005, expiration date for the document preservation fund and to continue the additional fees imposed for the purpose of funding that fund.

MOTOR VEHICLE BRANCH OFFICES

Background

During the 1999-2000 interim, the Budget Committee on Government Services studied state agency office space needs to determine the feasibility and desirability of transferring state agencies or state employees to rural areas. As part of this study, the committee recommended 2001 Senate Bill No. 2027, which as enrolled, provided for a motor vehicle branch office pilot project at three sites within Bowman, Emmons, and McKenzie Counties. The bill provided the three branch offices to administer motor vehicle registration programs would be operated by the country treasurer of each county and the Department of Transportation was responsible for paying the training costs of the personnel necessary to implement the pilot project. The pilot project is scheduled to expire July 31, 2005.

Testimony and Commission Considerations

The commission received a motor vehicle branch office pilot project status report from representatives of the Department of Transportation and from representatives of the three county treasurers of the pilot counties. As part of these status reports, the commission received testimony that a performance audit of the Department of Transportation Driver and Vehicle Services was conducted by the State Auditor, at the request of the Legislative Council's interim Legislative Audit and Fiscal Review Committee. The audit dated July 11, 2003, and

conducted for the State Auditor by the independent consulting firm MTG Management Consultants, LLC (MTG), provided several recommendations, including:

> MTG recommends the Department of Transportation's Motor Vehicle Division evaluate the current process for awarding branch office contracts including the need for a change in North Dakota Century Code and consider competitive contracts for branch office operations. Contracts should be awarded based upon the ability to perform the work, relative experience, vendor performance, and cost considerations.

The commission received testimony the Department of Transportation is consulting with the Governor regarding several of the audit recommendations, including this recommendation, in order to form a comprehensive strategic plan that includes the issue of motor vehicle branch offices.

A representative of the Department of Transportation testified that in addition to the pilot program required under Senate Bill No. 2027, NDCC Section 39-02-03 authorizes the director of the Department of Transportation, subject to the Governor's approval, to establish branch offices as determined necessary. Therefore, regardless of the expiration of the pilot program, the department and the Governor may continue the three branches operated by county treasurers and may add additional county treasurer-operated branch offices.

Testimony was received that the state's motor vehicle registration and licensing services are available through the mail, branch offices, Internet, and the main Department of Transportation office in Bismarck. Regardless of which system is used to register or license a vehicle, because it is a closed system, adding another mechanism does not increase the total number of registrations or renewals. Although all the vehicle registration and licensure services may be provided remotely, through the mail or through the Internet, some individuals prefer person-to-person contact through a branch office or through the main office in Bismarck.

Testimony was received that although the three pilot project branch offices are not using the vehicle registration and titling system, they are in the process of moving to this system. The initial setup cost in the pilot project branch offices was less than the Department of Transportation initially expected and the cost of implementing the vehicle registration and titling system will likely be recognized as a cost-savings. A representative of the Department of Transportation testified that the three county treasurer branch offices will remain after expiration of the pilot program, in part because the three branches are working well and in part because once a service is offered it is very difficult to take away that service.

Representatives of the three pilot counties testified that the pilot project has been very successful in all three counties. All three pilot program branch offices fund their operations by charging a surcharge, and these surcharge fees are retained by the counties in their general funds. Not only do the counties benefit from providing the branch office services but because of individuals coming to register motor vehicles, local businesses benefit from having a branch office in the community.

The commission received testimony from proponents of the pilot program requesting that the existing three county treasurer-operated branch offices remain and that additional county treasurer-operated branch office sites be considered. In support of this request, the commission received testimony that because of the changing duties of treasurers, such as automation in county government, it has become possible for some treasurers to add services, such as motor vehicle registration. County government may have a unique advantage in operating branch sites due to the infrastructure and technology available to the counties. However, not every county is seeking a branch office. The provision of branch office services is hard work and requires a significant investment in equipment, an investment that not all counties are interested in pursuing.

At the request of the commission, representatives of the North Dakota Association of Counties, the three treasurers in the pilot project counties, and representatives of the Department of Transportation met to discuss how to proceed with the matter of the expiration of the pilot project. Although the meeting did not result in the determination of agreed-upon specified criteria upon which to make branch office location determinations, the parties did agree upon several general factors that should be considered in making future branch office location determinations, including population, distance between branch offices, the desire or the ability of a county treasurer to provide branch office services, the cost of establishing an office, and time-honored tradition. Additionally, the commission received testimony from a representative of the Department of Transportation that in addition to the continued existence of the three current branch offices operated by treasurers, the department supports adding three additional county treasurer-located branch offices in the next two years. The packet of information the Department of Transportation is submitting to the Governor for consideration in establishing the comprehensive strategic plan for motor vehicle branch offices will include information submitted by representatives of the three pilot project branch office treasurers.

Conclusion

The commission makes no recommendation with respect to motor vehicle branch offices.

SHERIFF SERVICE OF PROCESS

Testimony and Commission Considerations

The commission received a report from representatives of the North Dakota Association of Counties regarding issues relating to payment to sheriffs for service of process. Testimony was received that there is a difference of opinion by the Attorney General's office and the court system with regard to whether a county

sheriff may charge the court when personal service of a summons, a writ, a subpoena, a notice, or an order is requested by the court. A 1998 Attorney General's opinion provided that a sheriff can charge a court for the sheriff providing personal service. In addition to being a policy issue, the issue of service of process is a fiscal issue because counties incur costs related to sheriff service and the ultimate question may be whether these costs are more appropriately supported by county mill levies or whether these costs are more appropriately supported through an appropriation for the judicial branch. Testimony was received this payment issue may be one of the last unresolved issues remaining from court unification.

The commission received testimony from the State Court Administrator that although the courts have not budgeted for and are not prepared to pay sheriffs for personal service by sheriffs, there has been a move by district court judges to provide that once a party is served with a summons and complaint or a warrant, all subsequent service will be by first-class mail. The trend is that courts and judges are only using personal service as a last resort. A survey performed by the State Court Administrator's office indicates the cumulative court cost for paying sheriffs for personal service would be approximately $400,000 per biennium.

Conclusion

The commission makes no recommendation with respect to sheriff service of process funding issues.

EMERGENCY PREPAREDNESS

Background

During the 2001-02 interim, the commission received a report from the director of the North Dakota Division of Emergency Management regarding homeland security and emergency management. The commission did not make any recommendations regarding homeland security and emergency management.

During the 2003-04 interim, the Legislative Council's interim Emergency Services Committee studied the state's emergency management system; the impact of federal emergency reorganization on the state's emergency operations plan; emergency preparedness of state agencies and local governments; the state's public health unit infrastructure; and the ability of the public health units to respond to public health issues, including disease and other physical health, environmental, and disaster-related issues.

Testimony and Commission Considerations

The commission received a report on the status of the consolidation of State Radio Communications with the Division of Emergency Management, received a report on the status of the state's homeland security strategy and receipt of federal homeland security funds, received a report on the topic of intrastate mutual aid, and toured the State Operations Center and State Radio Communications.

Consolidation

The commission received a status report on the status of the consolidation of State Radio Communications with the Division of Emergency Management. The Division of Emergency Management is responsible for providing statewide public safety communications; providing emergency planning, training, and program assistance to political subdivisions, tribal governments, and the state; preparing and maintaining a state emergency operations plan; and coordinating public, private, and individual homeland security efforts. Following consolidation, the division consists of 55 full-time and temporary staff who may be needed during disaster response and recovery. Although the division is growing, the commission received testimony that this growth is in part based upon the receipt of federal funds.

Homeland Security

The commission received a report on the state's homeland security strategy and the receipt of federal homeland security funds. The commission received testimony from a representative of the Division of Emergency Management that the state's homeland security strategy goals and objectives include:

- Attaining radio communication interoperability among federal, state, local, and tribal first responders.
- Developing a prevention, response, and recovery capability to ensure accurate deployment of resources.
- Fostering the sharing of law enforcement sensitive information.
- Upgrading state terrorism and weapons of mass destruction response capability.
- Developing a tiered response capability to ensure statewide terrorism and weapons of mass destruction incident response.
- Improving the ability of the state to prevent, respond, and recover from acts of terrorism or of weapons of mass destruction through refinement of the state emergency operations plan, state multihazard mitigation plan, jurisdictional emergency operations plans, and jurisdictional multihazard mitigation plans.
- Assuring continuation of essential government functions in the state.
- Training first responders and community leaders to recognize, prevent, and respond to a terrorism or weapons of mass destruction incident.
- Institutionalizing command system training in the state.
- Expanding and supporting homeland security training into established academic institutions.
- Evaluating the competency of plans, training, and equipment and personnel resources through a progressive exercise program.
- Providing adequate professional and support staff to monitor, implement, and evaluate homeland security programs at a state and local level.

The commission received testimony that the time, energy, and financial resources necessary to reach these goals is significant and it is a myth that states have more homeland security money than they know what to do with. The fiscal year 2004 homeland security grant for North Dakota totaled $19,536,000.

The commission received testimony that the goal of radio communication interoperability will primarily be reached through converting analog communications to digital communications. This transition from an analog to digital system is in large part being pushed by the industry and some equipment on radio towers in the state is so old it is either impossible or too expensive to replace or repair.

The commission received testimony that the Division of Emergency Management is gathering information regarding the feasibility and desirability of investing in a reverse 911 system for emergency notification in the event of natural disasters, hazardous material releases, and severe weather and to assist in evacuations and safe returns. Drawbacks of reverse 911 systems may include saturation of telephone systems and questions regarding the actual effectiveness of the system for emergency notification, whereas beneficial elements of a reverse 911 system may include the effectiveness for notifying individuals in a specified area as well as providing excellent redundancy and rapid list capabilities.

Intrastate Mutual Aid

The commission received a status report from representatives of the Intrastate Mutual Aid Committee regarding the committee's activities to address emergency response unit provision of intrastate mutual aid. Following the events of September 11, 2001, the Department of Homeland Security and National Emergency Management Association recognized the need to effectively move assets between local jurisdictions as they respond to disasters. Recognizing a similar need in the state, the North Dakota Division of Emergency Management identified and brought together 24 agencies and organizations to form the Intrastate Mutual Aid Committee to discuss the need for intrastate mutual aid legislation. This committee ultimately formed a smaller working group to help draft proposed legislation for the 2005 legislative session. The commission received a draft of the committee's proposed legislation for which the committee is seeking bipartisan legislator sponsorship.

Proponents of the proposed legislation testified that the proposed legislation provides the basic groundwork for communities requesting help from one another and for filling gaps for situations and service providers for which formal mutual aid agreements do not exist. In addition to providing for the default use of an incident command system, which outlines the command, control, and coordination of resources and personnel at the scene of an emergency, the proposed legislation may help ensure that agencies involved in responding to emergencies are eligible for receipt of Homeland Security Department funds.

Conclusion

The commission supports the concept of intrastate mutual aid; however, due to time limitations, it was not feasible for the commission to recommend a bill.

WIND TURBINE SITING

Background

During the 2001-02 interim, the commission received a report from a representative of the National Conference of State Legislatures regarding the generation of electricity through wind energy. The commission did not make any recommendations with respect to wind energy.

During the 2003-04 interim, the Legislative Council's interim Electric Industry Competition Committee studied issues related to wind energy development in the state; the feasibility and desirability of enacting legislation to tax electric utility providers with a fair and uniform tax system; and the impact of competition on the generation, transmission, and distribution of electric energy within the state.

Testimony and Commission Considerations

The commission considered issues relating to siting of wind turbines. The commission received a report from a representative of the American Wind Energy Association regarding wind turbine siting, including:

- Where wind resources are located in the United States,
- Which states have renewable energy standards,
- How much energy each state in the country uses,
- Turbine technology statistics,
- Statistics regarding worldwide use of wind energy,
- Information regarding how policy affects wind energy,
- Issues related to turbine siting, and
- Statistics regarding the future of wind energy.

The commission received testimony from a representative of the American Wind Energy Association regarding issues that may arise upon decommission of a wind turbine. There may be value in addressing the issue of cleanup of a decommissioned site during initial site determination and initial contracts. In the late 1970s and 1980s, wind energy incentives were based upon capital investiture; therefore, efficiency was not the issue of primary importance and as a result many of these sites were abandoned. However, the wind industry learned from these earlier experiences and incentives are now typically based on productivity, resulting in more successful sites. Additionally, because a wind turbine will not face an exhausted resource, a turbine may be updated and may essentially last indefinitely. Options for dealing with decommissioning include state regulation, front-end incentive provisions, establishment of escrow accounts, and specific contract provisions.

The commission received testimony from a representative of the American Wind Energy Association regarding wind turbine siting issues. Minnesota is one of two states that have addressed wind turbine siting through state law and administrative rule. Minnesota

limits the statewide siting requirements to large wind turbine projects, intentionally excluding community wind projects so that local zoning and ordinances can address these smaller projects.

The commission received testimony from a representative of the American Wind Energy Association regarding transmission lines and integration. Although the issues related to the issue of transmission lines need to be dealt with federally, there are examples of wind energy transmission being successful.

Conclusion

The commission makes no recommendation with respect to wind energy.

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, Larry Bellew, Rick Berg, Merle Boucher, Thomas Brusegaard, Ron Carlisle, Al Carlson, Jeff Delzer, Eliot Glassheim, Pam Gulleson, Keith Kempenich, James Kerzman, Kim Koppelman, Joe Kroeber, Bob Martinson, Ralph Metcalf, David Monson, Earl Rennerfeldt, Bob Skarphol, Blair Thoreson, Mike Timm, Francis J. Wald, John Warner, and Amy Warnke and Senators John M. Andrist, Bill L. Bowman, Randel Christmann, Michael A. Every, Tony S. Grindberg, Ray Holmberg, Ralph L. Kilzer, Aaron Krauter, Ed Kringstad, Elroy N. Lindaas, Tim Mathern, David P. O'Connell, Larry Robinson, Randy A. Schobinger, Bob Stenehjem, Harvey Tallackson, and Russell T. Thane. Representative Janet Wentz was also a member of the committee until her death on September 15, 2003.

The Budget Section submitted this report to the Legislative Council at the biennial meeting of the Council in November 2004. The Council accepted the report for submission to the 59th Legislative Assembly.

The following duties, assigned to the Budget Section by statute, were acted on during the 2003-05 biennium:

1. **Status of the State Board of Agricultural Research and Education (Section 4-05.1-19(10))** - This section requires, within the duties of the State Board of Agricultural Research and Education, that a status report is to be presented to the Budget Section.
2. **Statement from ethanol plants that received production incentives (Section 4-14.1-07)** - This section requires any North Dakota ethanol plant receiving production incentives from the state to file with the Budget Section, within 90 days after the conclusion of the plant's fiscal year, a statement by a certified public accountant indicating whether the plant produced a profit during the preceding fiscal year, after deducting incentive payments received from the state.
3. **Higher education campus improvements and building construction (Section 15-10-12.1)** - 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 board. Campus improvements and building maintenance of more than $385,000 also require the approval of the Budget Section or Legislative Assembly. Budget Section approval can only be provided when the Legislative Assembly is not in session and the six months prior to a regular legislative session. The 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.
4. **Allocation of funds from appropriations for undesignated centers of excellence (Section 15-10-41)** - This section requires the State Board of Higher Education to allocate funds from appropriations for undesignated centers of excellence relating to economic development based on criteria established and to report on such allocations, in partnership with the North Dakota Economic Development Foundation, to the Budget Section.
5. **Transfers to the state tuition fund (Section 15.1-02-14)** - 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 money received by the Superintendent to pay programmatic administrative expenses for which the Superintendent received a state general fund appropriation.
6. **State building construction projects (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.
7. **Job insurance trust fund (Section 52-02-17)** - This section requires that Job Service North Dakota report to the Legislative Council 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. The Legislative Council assigned this responsibility to the Budget Section.

8. **Irregularities in the fiscal practices of the state (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.
9. **Transfers exceeding $50,000 (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.
10. **Acceptance and expenditure of more than $50,000 of federal funds that were not appropriated (Section 54-16-04.1).**
    a. **Acceptance of federal funds** - This section provides that Budget Section approval is required for any Emergency Commission action authorizing a state officer to accept more than $50,000 of federal funds that were not appropriated and the Legislative Assembly has not indicated an intent to reject the money. Budget Section approval is not required if the acceptance is necessary 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.
    b. **Expenditure of federal funds** - 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 the Legislative Assembly has not indicated an intent to reject the money.
11. **Acceptance and expenditure of more than $50,000 of other funds which were not appropriated (Section 54-16-04.2).**
    a. **Acceptance of other funds** - This section provides that Budget Section approval is required for any Emergency Commission action authorizing a state officer to accept more than $50,000 from gifts, grants, donations, or other sources, which were not appropriated and the Legislative Assembly has not indicated an intent to reject money or programs. Budget Section approval is not required if the acceptance is necessary 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.
    b. **Expenditure of other funds** - 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 the Legislative Assembly has not indicated an intent to reject the money or programs.
12. **Transfers of spending authority from the state contingencies appropriation exceeding $50,000 (Section 54-16-09)** - This section provides that, subject to Budget Section approval, the Emergency Commission may authorize a transfer of more than $50,000 from the state contingencies line item to the appropriate line item in the appropriation of the state officer who requested the transfer. Budget Section approval is not required if the transfer is necessary 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.
13. **Tobacco settlement funds (Section 54-44-04(23))** - This section provides that the director of the Office of Management and Budget shall report to the Budget Section on the status of tobacco settlement funds and related information.
14. **Form of budget data (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, except for drafts of proposed general and special appropriations acts embodying the budget data and recommendations of the Governor for appropriations for the next biennium and drafts of such revenues and other acts recommended by the Governor for putting into effect the proposed financial plan, which must be submitted to the Legislative Council within seven days after the day of adjournment of the organizational session. The Legislative Council assigned this responsibility to the Budget Section.
15. **Report from the Information Technology Department (Section 54-59-19)** - 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.

16. **Status of the risk management workers' compensation program (Section 65-04-03.1(5))** - This section requires Workforce Safety and Insurance 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. **Sources of funds received for construction projects of entities under the State Board of Higher Education (Section 15-10-12.3)** - 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.
18. **Game and Fish Department land acquisitions (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 $10,000.
19. **Annual audits of renaissance fund organizations (Section 40-63-07(9))** - This section requires the Department of Commerce Division of Community Services to provide annual reports to the Budget Section on the results of audits of renaissance fund organizations.
20. **Workforce Safety and Insurance building maintenance account (Section 65-02-05.1)** - This section requires that if a new Workforce Safety and Insurance facility is built and rental space is included in the facility, Workforce Safety and Insurance 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 into and expenditures from the account.
21. **Performance assurance fund (Section 49-21-31)** - This section requires the Public Service Commission to report annually to the Budget Section with respect to the payments received under the performance assurance plan and the expenditures from the performance assurance fund.
22. **Preliminary planning revolving fund (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.
23. **Money spent to administer an Internet web site that provides career guidance and job opportunity services (Section 54-60-10)** - This section requires the Department of Commerce to report annually to the Budget Section regarding money spent to administer an Internet web site that provides career guidance and job opportunity services.
24. **Report on the internship program (2003 House Bill No. 1003, Section 31)** - This section requires the State Board of Higher Education to report to the Budget Section at the committee's first meeting after July 1, 2004, on the internship program implemented to attract students to high-growth occupations in the state.
25. **Status of outsourcing employee positions (2003 House Bill No. 1004, Section 13)** - This section requires the State Department of Health to report to the Budget Section on the status of outsourcing employee positions whenever reasonable.
26. **Status of the Veterans Home Governing Board's progress in developing and implementing the Veterans Home strategic plan (2003 House Bill No. 1007, Section 4)** - This section requires a representative of the Veterans Home Governing Board to periodically report to the Budget Section on the status of the board's progress in developing and implementing a strategic plan for the Veterans Home during the 2003-04 interim.
27. **Veterans Home line item transfers of up to $150,000 (2003 House Bill No. 1007, Section 6)** - This section authorizes the Veterans Home to transfer up to $150,000 between line items and to report to the Budget Section any transfers during the 2001-03 biennium to implement changes in technology and telecommunications.
28. **Recommendations for merger of the Oil and Gas Division and Geological Survey (2003 House Bill No. 1015, Section 14)** - This section requires the Industrial Commission to report to the Budget Section before November 1, 2004, regarding recommendations for the merger of the Oil and Gas Division and Geological Survey.
29. **Transfers between line items and between subdivisions in excess of $50,000 (2003 Senate Bill No. 2012, Section 7)** - This section requires the Department of Human Services to report to the Budget Section after June 30, 2004, on any transfers of appropriation authority between line items within each subdivision and between subdivisions in excess of $50,000.
30. **Delivery of consolidated services to agencies and the status of accumulated savings (2003 Senate Bill No. 2015, Section 30 and 2003 House Bill No. 1505, Section 12)** - These sections require the Information Technology Department to report to the Budget Section on information relating to the delivery of the consolidated services to agencies and the status of the accumulated savings.

31. **Transfers of funds between line items for state agencies to accommodate information technology funding reductions (2003 House Bill No. 1505, Section 8)** - This section requires the Office of Management and Budget to report to the Budget Section regularly on the transfers of funds made by the director of the Office of Management and Budget and the State Treasurer between line items for state agencies, departments, and institutions as may be requested to accommodate information technology funding reductions made by the 58th Legislative Assembly (2003).
32. **Information technology organizational study and information technology management study (2003 House Bill No. 1505, Section 13)** - This section requires a final report on the information technology organizational study and the information technology management study to be presented to the Budget Section upon completion of the studies.
33. **Implementation and procedures of contracting with counties to house female inmates (2003 House Bill No. 1506, Section 5)** - This section requires the Department of Corrections and Rehabilitation and county jails contracting to house state female inmates to report to the fall 2003 and summer 2004 meetings of the Budget Section on the implementation and procedures of contracting with counties to house state female inmates.
34. **State employee positions eliminated by agencies and reported agency budgetary savings (2003 Senate Bill No. 2423, Section 1)** - This section requires the Office of Management and Budget to report periodically to the Budget Section on the employee positions eliminated by agencies and reported agency budgetary savings.
35. **State employee salary increases (2003 Senate Bill No. 2423, Section 3)** - This section requires the Office of Management and Budget and the judicial branch to report to the Budget Section on salary increases provided for each year of the 2003-05 biennium.

The following duties, assigned to the Budget Section by statute or Legislative Council directive, are scheduled to be addressed by the Budget Section at its December 2004 meeting:

1. **Receive report on specified commodities and services exempted from the procurement requirements of NDCC Chapter 54-44.4 (2003 Senate Bill No. 2015, Section 42)** - This section requires the director of the Office of Management and Budget to report to the Budget Section in December of even-numbered years on specified commodities and services exempted by written directive of the director from the procurement requirements of Chapter 54-44.4.
2. **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 2003-04 interim:

1. **Objection to budget allotments or expenditures (Section 54-44.1-12.1)** - This section allows the Budget Section to object to a budget allotment, an expenditure, or the failure to make an allotment or expenditure if such action is contrary to legislative intent.
2. **Requests by the Information Technology Department to finance the purchase of software, equipment, or implementation of services (Section 54-59-05(4))** - 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. The department may finance the purchase of software, equipment, or implementation of services only to the extent the purchase amount does not exceed 7.5 percent of the amount appropriated to the department during that biennium.
3. **Extraterritorial workers' compensation insurance (Section 65-08.1-02)** - This section authorizes Workforce Safety and Insurance to establish, subject to Budget Section approval, a casualty insurance organization to provide extraterritorial workers' compensation insurance.
4. **State Forester reserve account (Section 4-19-01.2)** - This section provides that Budget Section approval is required prior to the State Forester spending money in the State Forester reserve account.
5. **Investment in real property by the Board of University and School Lands (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.
6. **Reduction of the game and fish fund balance below $10 million (Section 20.1-02-16.1)** - This section provides that the Game and Fish Department can spend money 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.

7. **Provision of contract services by the Developmental Center (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.
8. **Waiver of exemption of special assessments levied for flood control purposes on state property (Section 40-23-22.1)** - 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. The exemption does not apply to any privately owned structure, fixture, or improvement located on state-owned land if the structure, fixture, or improvement is used for commercial purposes unless the structure, fixture, or improvement is primarily used for athletic or educational purposes at a state institution of higher education.
9. **Termination of food stamp program (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.
10. **Termination of energy assistance program (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.
11. **Transfers resulting in program elimination (Section 54-16-04(1))** - This section provides that, subject to Budget Section approval, the Emergency Commission may authorize a transfer which would eliminate or make impossible the accomplishment of a program or objective funded by the Legislative Assembly.
12. **New correctional programs which exceed $100,000 of cost during a biennium (Section 54-23.3-09)** - 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, 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.
13. **Cashflow financing (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 cash flow financing, subject to certain limitations, must be approved by the Budget Section.
14. **Budget stabilization fund (Section 54-27.2-03)** - This section provides that any transfers from the budget stabilization fund must be reported to the Budget Section.
15. **Budget reduction resulting from initiative or referendum action (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.
16. **Children's Services Coordinating Committee grants (Section 54-56-03)** - This section provides 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.
17. **Federal block grant hearings (2003 House Concurrent Resolution No. 3001)** - This resolution authorizes the Budget Section, through September 30, 2005, to hold any required legislative hearings for federal block grants.
18. **State agency unclaimed property (Section 47-30.1-24.1)** - This section requires the commissioner of University and School Lands to present a report to the Budget Section identifying every state agency that has not submitted a claim for unclaimed property belonging to that agency within one year of receipt of the certified mail notification.
19. **Relinquishment of agency rights to recover property (Section 47-30.1-24.1)** - This section provides that each state agency that does not submit a claim for unclaimed property belonging to that agency within one year of receipt of the certified mail notification relinquishes its right to recover the property, upon approval of the Budget Section.
20. **Purchases of "put" options (Section 54-44-16)** - This section requires the Office of Management and Budget to report any purchases of "put" options to the Budget Section.

21. **Approval of expenditures exceeding $130,000 from Department of Commerce operating fund for web site maintenance (Section 54-60-10)** - This section provides that any additional amounts over $130,000 that are deposited in the Department of Commerce operating fund during a biennium from subscriptions, commissions, fees, or other revenue from the Internet web site may be spent pursuant to legislative appropriations or with Budget Section approval.
22. **Construction of equipment and storage buildings in Towner and Bottineau (2003 House Bill No. 1003, Section 11)** - 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 equipment and supply storage buildings in Towner and Bottineau.
23. **Transfers from the Bank of North Dakota to offset declines in general fund revenue (2003 Senate Bill No. 2015, Section 10)** - This section provides that the Budget Section may approve the transfer of up to the lesser of $9 million or the revenue shortfall from the earnings and accumulated and undivided profits of the Bank of North Dakota to the state general fund if, during the 2003-05 biennium, the director of the Office of Management and Budget determines that general fund revenues will not meet the legislative forecast.

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 reported in October 2004, reflecting the August 2004 revised revenue forecast for the remainder of the 2003-05 biennium:

Unobligated general fund balance - July 1, 2003	$14,790,311
Add	
General fund collections through August 31, 2004	1,049,007,618
Forecasted general fund revenue for the remainder of the 2003-05 biennium (based on the August 2004 revised revenue forecast)	799,854,223
Jobs and Growth Tax Relief Reconciliation Act of 2003 payments	50,000,000
Jobs and Growth Tax Relief Reconciliation Act of 2003 - Enhanced Medicaid federal medical assistance percentage	6,456,581
Total estimated general fund revenue for the 2003-05 biennium	$1,920,108,733
Less	
2003-05 biennium general fund appropriations	1,803,661,161
Estimated general fund balance - June 30, 2005 ($106,194,663 more than the 2003 legislative estimate of $10,252,909)	$116,447,572

The August 2004 revenue forecast estimated total revenue for the 2003-05 biennium to be approximately $1,685,000,000, which was approximately $33.3 million more than the March 2003 forecast. The increase in revenue was due mainly to an increase in sales and use tax collections. Based on the preliminary revenue forecast, the transfers to the permanent oil tax trust fund for the 2003-05 biennium are anticipated to be $16.8 million. The average price per barrel of oil has been above the trigger price for five consecutive months, resulting in an increase in the oil extraction tax rate as of October 1, 2004. The tax rate for approximately 58 percent of monthly oil production will increase from 4 to 6.5 percent. The increased tax rate will remain in effect until the average price per barrel of oil drops below the trigger price for five consecutive months. Pursuant to NDCC Section 57-51.1-01, the trigger price is $35.50 as indexed for inflation, and the Tax Commissioner computes the indexed trigger price by December 31 of each year to be applied for the following calendar year. The adjusted trigger price for 2004 is $35.11.

The revised forecast projects total revenue for the 2005-07 biennium to be approximately $1,754,000,000, which is approximately $102.5 million more than the March 2003 forecast. The oil and gas production tax and the oil extraction tax are not anticipated to reach the $71 million cap for the 2005-07 biennium, resulting in no anticipated transfers to the permanent oil tax trust fund for the 2005-07 biennium.

The Office of Management and Budget reported that preliminary deficiency general fund appropriations requests for the 2003-05 biennium as of October 1, 2004, total approximately $11 million as shown below:

Agency	Potential Deficiency Appropriation
Division of Emergency Management	$6,275,000
Information Technology Department	1,070,000
Department of Corrections and Rehabilitation	1,250,000
Veterans Home	200,000
Deep Creek fire - Preliminary	310,000
University of North Dakota (1997 flood)	371,000
North Dakota State University (2000 flood)	1,500,000
Attorney General - Prosecution witness fees and crime lab costs	110,000
Total	$11,086,000

Fiscal Irregularities

Pursuant to NDCC Section 54-14-03.1, the Budget Section received reports 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 Office of Management and Budget identified the following fiscal irregularities:

- Department of Labor - Overspent its salary line item appropriation by $705.78 due to an error in

the calculation of hospital insurance rates for nine employees.

- State Department of Health - Paid $1,570 to an employee for an increase in workload and $29,492 to another employee for early retirement buyout.
- Department of Commerce - Provides quarterly bonuses to an individual with the manufacturing extension partnership.
- University System - Paid $1,000 to an employee for a temporary workload increase.
- Office of Administrative Hearings - Paid $1,000 each to two employees for workload increases prior to official reclassification.
- Land Department - Paid an employee $598.99 for three years of back holiday pay which had been calculated incorrectly.
- Department of Public Instruction - Provided several employees with additional pay for workload increases related to the 2003 legislative session.

The Budget Section was also informed of a statutory requirement that a state agency cannot spend more than 75 percent of its salary and operating line items in the first 18 months of a biennium. State Radio Communications spent more than 75 percent of its salary line item during the first 18 months of the 2001-03 biennium due to overtime payments made to employees for overtime work that resulted from a large number of vacant positions in the agency. State Radio Communications overspent its salary line item by $49,676 by December 31, 2002, but did not overspend the salary line item in total by the end of the 2001-03 biennium.

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 2004 balance in the preliminary planning revolving fund was $140,000. The report included the following criteria that are used to evaluate agency requests for money from the preliminary planning revolving fund:

- External mandates, such as a court order and 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 needs 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 two projects that the Office of Management and Budget plans to recommend to future legislative assemblies:

Agency	Project Description	Recommended Funding From the Preliminary Planning Fund
Office of Management and Budget	Fire suppression system for the State Capitol	$35,000
Department of Corrections and Rehabilitation	Replacement of the east cellhouse at the State Penitentiary	60,000
Total recommended funding		$95,000

Pursuant to NDCC Section 54-27-22, the Budget Section approved the distribution of $95,000 from the preliminary planning revolving fund, as recommended by the Office of Management and Budget.

Architect's Study on East Cellhouse Replacement

The Budget Section approved the Department of Corrections and Rehabilitation request for $60,000 from the preliminary planning revolving fund to determine the cost and specifications of a replacement to the east cellhouse at the State Penitentiary. The Department of Corrections and Rehabilitation hired Ritterbush and Associates, Bismarck, and HDR Architecture, Inc., Chicago, Illinois, to conduct the study of the replacement of the east cellhouse.

The Budget Section learned that construction of the east cellhouse was completed in 1910, its capacity is 159 maximum security inmates, and the State Penitentiary needs more segregation cells and a larger inmate orientation area. Results of the study's findings include the Department of Corrections and Rehabilitation's expensive outsourcing of beds, difficulty in managing inmates, and exposure to lawsuits.

Expansion plans for the State Penitentiary include:

1. Relocating the warehouse.
2. Constructing new vehicle access and new south tower.
3. Demolishing existing south tower.
4. Constructing new orientation housing, an inmate intake/transfer unit, clinic, infirmary, segregation unit, visitor's entrance, and laundry facility.
5. Eliminating the east cellhouse.

The expansion would result in a net prison bed gain of 123 permanent beds and would require an additional 38.4 staff. The total cost of the buildings is estimated to be $16.3 million and the total project cost, including demolition costs, contingency, fees, furnishings, and equipment, is estimated to be $29.2 million. The estimated cost per cell based on the buildings' construction costs is approximately $71,000, and the estimated cost per cell based on the total project cost, excluding demolition costs, is approximately $95,000. The total project cost would increase by approximately $2.1 million if the project was delayed from 2006 until 2008.

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 2004 approximately $129.5 million had been received to date by the state and deposited in the tobacco settlement trust fund. Another tobacco company has joined the tobacco settlement, which the Office of Management and Budget expects will result in North Dakota receiving an additional $600,000 to $700,000 per year. The proceeds have been apportioned among the community health trust fund, common schools trust fund, and water development trust fund as follows pursuant to Section 54-27-25:

Tobacco settlement trust fund	
Community health trust fund (10%)	$12,952,041
Common schools trust fund (45%)	58,284,181
Water development trust fund (45%)	58,284,181
Total transfers from the tobacco settlement trust fund	$129,520,403

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

Community health trust fund	
Deposits	$12,952,041
Expenditures	7,548,962
August 31, 2004, balance	$5,403,079
Water development trust fund	
Deposits	$58,284,181
Expenditures	55,677,434
August 31, 2004, balance	$2,606,747

Information Technology Funding Reductions

Pursuant to Section 8 of 2003 House Bill No. 1505, the Budget Section received reports on line item transfers made to accommodate information technology funding reductions. The Office of Management and Budget reported that as of October 2004 two transfers had been made pursuant to this section--a $8,458 transfer made by the Tax Department from the salaries and wages line item to the operating line item and a $30,650 transfer made by the Land Department from the capital assets line item to the operating line item.

2005-07 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 59th Legislative Assembly (2005), including any future plans for incorporating performance measurements in budget data.

The Office of Management and Budget reported that the Executive Budget Office worked with Affinity Global Solutions, the software development firm that originally developed the statewide integrated budget and reporting (SIBR) system, to upgrade SIBR through implementation of the firm's budget analysis and reporting system (BARS). The budget and reporting system looks similar to SIBR, but BARS provides greater detail in some areas of the budget. The flexibility of BARS allows the Executive Budget Office to incorporate several items of interest to legislators into the system, such as the telecommute analysis form, reports on continuing appropriations statutorily authorized for each agency, and agency information technology plans. The flexibility of BARS also allows the Office of Management and Budget to incorporate some additional performance budgeting information without modifying the application or incurring additional programming costs. The Office of Management and Budget reported that agencies will be asked to complete narrative fields outlining their mission statements, strategic goals and objectives, program level strategic goals and objectives, and program outcomes and statistical data.

The Budget Section deferred the performance measures component to the Government Performance and Accountability Committee, and the Office of Management and Budget was to coordinate its related budget form changes with the Government Performance and Accountability Committee.

Pursuant to NDCC Section 54-44.1-07, the Budget Section approved changes to the budget data as proposed by the Office of Management and Budget, including information on telecommute analysis, agency continuing appropriations, and agency information technology plans.

Status of State Employee Position Reductions

Pursuant to Section 1 of 2003 Senate Bill No. 2423, the Office of Management and Budget presented a report to the Budget Section on the status of state employee position reductions and the expected agency budgetary savings. Section 1 of 2003 Senate Bill No. 2423 provides legislative intent that 155 full-time equivalent (FTE) positions from the executive branch agencies (excluding offices of state elected officials and higher education), 13 FTE positions from state elected officials (excluding the Governor's office), and 8 FTE positions from the judicial branch be eliminated, with the savings to provide an employee pay raise of 1 percent and 2 percent on January 1, 2004, and 2005, respectively. One-half of the total employee reductions were to be accomplished by December 31, 2003, with the remaining reductions made by December 31, 2004, and agencies were to report positions eliminated and the projected salaries and wages and fringe benefit savings for the remainder of the 2003-05 biennium to the Office of Management and Budget. The savings were to be pooled and used to fund increases for all employees in the salary pool. As of August 1, 2003, the Office of Management and Budget received the following information from agencies that would have eliminated FTE positions to provide a 1 percent salary increase on January 1, 2004:

Agency	FTE Reductions	Anticipated Savings	Cost of 1 Percent Increase	Source of Funds
Agency positions reported to be eliminated by December 31, 2003				
Tax Commissioner	2.00	$79,487	$81,300	General fund
Insurance Department	0.50	31,000	31,100	Special funds
State Department of Health	3.00	196,600	196,600	Federal funds (72%); general fund (18%)
Job Service North Dakota	2.14	212,296	213,700	Federal funds
Housing Finance Agency	0.92	27,520	25,300	Special funds
Total	8.56	$546,903	$548,000	
Agency positions reported to be eliminated during the 2003-05 biennium				
Bank of North Dakota	1.50	$115,943	$165,633	Special funds
Game and Fish Department	2.00	170,000	164,679	Special funds
Total	3.50	$285,943	$330,312	
Workforce Safety and Insurance*	3.86	$0	N/A	

*Workforce Safety and Insurance is reducing 3.86 FTE positions but will be giving increases based upon statutory performance increases, not the 1 percent identified in 2003 Senate Bill No. 2423.

On November 7, 2003, the Attorney General's office issued Letter Opinion 2003-L-49, which stated that Senate Bill No. 2423 does not authorize pay raises to be granted only to employees of those agencies actually generating savings through job elimination; employees of any agency in the executive branch pool are equally eligible for a raise from any money legally available in the pool for that purpose. A footnote to the opinion stated "Of course, the amount of money available for across the board raises may be insufficient to make such raises practicable or worthwhile." Therefore, because of insufficient pooled funds, no state agency in the executive branch or elected official salary pool was able to provide the 1 percent salary increase to its employees on January 1, 2004, as provided for in 2003 Senate Bill No. 2423.

JUDICIAL BRANCH

Employee Salary Increases

Pursuant to Section 3 of 2003 Senate Bill No. 2423, the Budget Section received a report from the judicial branch regarding employee salary increases. The judicial branch reported that 2003 Senate Bill No. 2423 provided for a 1 percent pay increase if agencies and branches of government could meet the staffing reductions as provided in the bill effective January 1, 2004. The Council of Presiding Judges met in July 2003 and reviewed and revised the judicial branch's procedures for reviewing position vacancies. After the review of the vacant positions, it was determined a few positions could be eliminated without adversely affecting the ability to successfully fulfill the mission of the district courts. Through attrition, the judicial branch reduced a total of four FTEs--one deputy clerk of court position in each of three counties (Walsh, Williams, and Stutsman) and one juvenile court officer position in Burleigh County--resulting in anticipated savings of $393,915 and the cost to implement the 1 percent pay increase was $177,901. The judicial branch reported it will continue to use rigorous standards and periodical management reviews to analyze all position vacancies with the objective of moving or eliminating any positions that do not address core functions of the courts.

HIGHER EDUCATION

Student Internship Program

The Budget Section received a report from the North Dakota University System regarding the status of the student internship program, pursuant to Section 31 of 2003 House Bill No. 1003. The Budget Section learned that the statewide student internship program was developed and started on September 15, 2004. The four specific goals of the program are to:

- Increase the number of students participating in internship programs.
- Increase the percentage of graduates employed in North Dakota.
- Provide students with "real-world" work experiences.
- Increase opportunities for North Dakota employers to recruit potential employees.

The University System will receive followup information on the North Dakota education and training system which will allow the University System to determine the percentage of graduates which remain in the community and state as a result of participating in an internship program in comparison to graduates who do not have an internship experience. The followup information will allow the University System and the Legislative Assembly to measure the effectiveness of the internship program, particularly as it relates to retaining graduates in North Dakota.

Undesignated Centers of Excellence

The Budget Section received a report from the State Board of Higher Education on the allocation of funds from appropriations for undesignated centers of excellence relating to economic development, pursuant to NDCC Section 15-10-41. The State Board of Higher Education received the following six proposals for centers of excellence funding which totaled $1,257,000:

Bismarck State College	National Energy Technology Training and Education Center	$400,000
Williston State College	Oil Field Training Center	139,000
State College of Science	Allied Health	100,000
University of North Dakota	School of Medicine and Health Sciences Neurosciences	135,000
University of North Dakota	Energy and Environmental Research Center fuel and cell infrastructure - Procurement to support hydrogen production	290,000
Mayville State University	Early Learning Center	193,000
Total		$1,257,000

The proposals were evaluated against criteria developed by the Joint Committee on Economic Development Centers of Excellence and adopted by the State Board of Higher Education. Based on the criteria, the Bismarck State College proposal scored the highest and the Williston State College proposal ranked second. The board had a total of $400,000 appropriated for this purpose, of which $300,000 was allocated to the Bismarck State College National Energy Technology Training and Education Center and $100,000 was allocated to the Williston State College Oil Field Training Center.

The Bismarck State College project assumes an 85,000-square-foot facility, specialized equipment and furnishings, a wind turbine, and land contribution for a total project cost of $12.7 million. The city of Bismarck approved a land transfer of seven acres, which is the proposed site for the facility, and as of October 2004, pledges, appropriations, and land contributions total $6.27 million. The Williston State College project established an advisory group of oilfield leaders to provide industry guidance, and meetings held with oilfield companies have resulted in agreements to provide Williston State College with the equipment necessary for training.

Capital Projects

During the 2003-04 interim, the Budget Section received requests relating to the following University System capital projects:

- **Minot State University - Old Main renovation project** - Pursuant to NDCC Section 48-02-20, the Budget Section approved Minot State University's request to increase other funds spending authority by $400,000 and total authorization from $8,650,000 to $9,050,000 for the Old Main renovation project due to higher than expected costs for steel reinforcement of the roof and wall of the auditorium.
- **University of North Dakota - Construction of an addition to the American Indian Center** - Pursuant to NDCC Section 48-02-20, the Budget Section approved the University of North Dakota's request to increase other funds spending authority by $500,000 for the construction of an addition to the existing University of North Dakota American Indian Center.
- **University of North Dakota - Laboratory renovation at the School of Medicine and Health Sciences and construction of a future underground link and additional storage space for the Center of Excellence in Neuroscience building** - Pursuant to NDCC Section 15-10-12.1, the Budget Section approved the University of North Dakota's request to increase other funds spending authority by $750,000 and total authorization from $3,353,462 to $4,103,462 for laboratory renovation at the School of Medicine and Health Sciences and construction of a future underground link and additional storage space for the Center of Excellence in Neuroscience building.
- **University of North Dakota - Partial renovation of the Carnegie Building** - Pursuant to NDCC Section 48-02-20, the Budget Section approved the University of North Dakota's request to spend $350,000 of institutional funds, in lieu of donations and gifts, for the partial renovation of the Carnegie Building for installation of heating, ventilation, and air-conditioning systems and window replacement.
- **University of North Dakota - Expansion of Neuroscience Research Facility** - Pursuant to NDCC Section 15-10-12.1, the Budget Section approved the University of North Dakota's request to increase federal funds spending authority by $984,159 for the expansion of the existing Neuroscience Research Facility at the University of North Dakota to include additional laboratory space.

Accountability Measures Report

The North Dakota University System provided the Budget Section with its third annual accountability measures report dated December 2003 and reviewed information regarding fiscal-related accountability measures, including research expenditures, tuition and fees comparison, tuition and fees compared to household income, status of North Dakota University System long-term finance plan, allocation and use of incentive funding, operating and contributed income ratio, and financing of new construction and major renovation projects.

Minot Health Care Facility

The Budget Section received a report from the University of North Dakota regarding the status of the Minot health care facility. The Budget Section learned that the University of North Dakota negotiated a lease with the University of North Dakota Foundation for the construction of a new health care clinic in Minot. The clinic will serve as a regional source of health care services provided by University of North Dakota School of Medicine and Health Sciences clinical training programs. The structure of the lease allows the University of North

Dakota Foundation to purchase land and construct a building using plans approved by the School of Medicine and Health Sciences. The facility will be leased by the University of North Dakota with rent sufficient to service the debt assumed by the foundation, and once the debt is retired, title for the land and building will revert to the University of North Dakota. The university anticipates the facility should begin operation as a functional training platform in spring 2005.

INFORMATION TECHNOLOGY DEPARTMENT

Annual Reports

2002-03 Annual Report

Pursuant to NDCC Section 54-59-19, the Budget Section received the Information Technology Department 2002-03 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 - A status report on the costs and benefits of large information technology projects completed in the last 12 months and a summary of other small information technology projects completed in the same period.
- Section 3 - Information on the department's performance, including a rate comparison and an update on the department's performance measures.
- Section 4 - An overview of ongoing information technology initiatives.

The Information Technology Department reported that it tracks and monitors the cost and the revenue for each service to ensure that 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. Approximately 93 percent of the department's total revenue is generated from 16 services.

2003-04 Annual Report

Pursuant to NDCC Section 54-59-19, the Budget Section received the Information Technology Department 2003-04 annual report. The annual report is composed of five sections:

- Section 1 - An executive summary that describes and quantifies benefits the state is realizing from investments in information technology.
- Section 2 - A status report on the costs and benefits of large information technology projects completed in the last 12 months.
- Section 3 - A summary of small information technology projects completed in the last 12 months.
- Section 4 - Information on the department's performance, including a rate comparison and an update on the department's performance measures.
- Section 5 - An overview of ongoing information technology initiatives.

The Information Technology Department reported that it tracks and monitors the cost and the revenue for each service to ensure that 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.

Information Technology Organizational and Management Studies

Pursuant to Section 13 of 2003 House Bill No. 1505, the Budget Section received information from representatives of Pacific Technologies, Inc., regarding the final report for the information technology organizational and management studies. The Budget Section learned the key information regarding the information technology organizational and management findings includes:

- North Dakota has a highly fragmented approach to workstation support and help desk services.
- There are inconsistent standards and policies surrounding workstation platforms, configurations, and replacement.
- The state can achieve additional savings and improve alignment with long-term goals through continued server consolidation efforts.
- The state lacks consistent methods, tools, and performance measures to assess information technology impacts on business operations, to prioritize requests for major information technology projects, and to evaluate information technology projects.

Major recommendations and corresponding primary benefits relating to the studies include:

Major Recommendations	Primary Benefits
Workstation support and help desk services - Consolidate all workstation support and help desk services within the Information Technology Department, including:	Positions the state's information technology environment for the long term
Initial problem reporting and resolution	Allows state agencies to focus on core business needs rather than technical infrastructure
Workstation environment maintenance and support	Leads to long-term labor cost-savings
Adds, moves, and changes	
Hardware replacement management	

Major Recommendations	Primary Benefits
Associated performance measurement and management	
Workstation standardization - Move to a highly standardized workstation environment on a statewide basis with the Information Technology Department managing a workstation replacement program	Improves the state's purchasing power and license management Enhances information sharing and staff productivity through common and current workstation tools Promotes the provisioning of basic information technology services as a "utility"
Server consolidation - Continue to consolidate all agency-managed servers into the Information Technology Department	Allows state agencies to focus on core business needs rather than technical infrastructure Promotes the provisioning of basic information technology services as a "utility" Leads to long-term labor and hardware cost-savings
Information technology governance - Improve the existing information technology governance processes by: Improving the processes and tools for information technology project evaluation Improving mechanisms to support cost-containment Developing meaningful statewide management and reporting views of information technology initiatives Implementing information technology performance measures Establishing an information technology innovation fund	Leads to better-informed decisionmaking Provides a more equitable, business-based, and consistent evaluation of information technology initiatives Provides the best opportunity to manage application portfolio costs

Information Technology Functional Consolidation

Pursuant to Section 30 of 2003 Senate Bill No. 2015 and Section 12 of 2003 House Bill No. 1505, the Information Technology Department presented information to the Budget Section regarding the delivery of consolidated services to agencies and the status of accumulated savings. House Bill No. 1505 provided for the consolidation of services, including e-mail, file and print server administration, storage, application server, and hosting services; a reduction of FTE positions and transfer of 24 FTE positions from various state agencies to the Information Technology Department; and the identification of $1.4 million in savings to be transferred to the general fund by the end of the 2003-05 biennium.

To accomplish the three directives of 2003 House Bill No. 1505, an Executive Steering Committee was formed, and the committee reviewed requests and granted exemptions to some state agencies from the information technology consolidation mandate. The Information Technology Department met with each state agency affected by the consolidation to analyze the impact of the consolidation on each agency. There were 15 state agencies identified in 2003 House Bill No. 1505 that were to transfer 24 FTE positions to the Information Technology Department and the savings generated through the consolidation to be transferred to the general fund. An additional 31 state agencies were identified which were to consolidate services and identify savings, without the transfer of any FTE positions to the Information Technology Department. A total of 15.5 of the 24 FTE positions identified in 2003 House Bill No. 1505 to be transferred to the Information Technology Department were exempted from the transfer and the remaining 8.5 FTE positions were transferred to the Information Technology Department on November 1, 2003.

Seven agencies had already consolidated information technology services with the Information Technology Department prior to the requirements of 2003 House Bill No. 1505. Five state agencies--State Treasurer's office, Indian Affairs Commission, Department of Veterans Affairs, Children's Services Coordinating Committee, and Council on the Arts--were not impacted by the consolidation because they did not have any services to transfer to the Information Technology Department. Five state entities--legislative branch, judicial branch, Public Employees Retirement System, Retirement and Investment Board, and Attorney General's office--were exempted from the consolidation by statute and nine other state agencies were exempted from the consolidation by the Executive Steering Committee. The agencies exempted from consolidation by the Executive Steering Committee will be analyzed each biennium for possible consolidation.

The Budget Section learned the entire savings of $1.4 million will not be realized because consolidation was originally projected to take place on July 1, 2003, with savings to be realized for the entire 2003-05 biennium, but implementation was not completed until the end of May 2004, or 11 months into the 2003-05 biennium. The amount of savings for the 2003-05 biennium has also been reduced as a result of fewer equipment credits given to agencies due to the inability to eliminate equipment still on lease. Another reason for a decrease in the amount of estimated savings for the 2003-05 biennium was due to the funding sources of savings, because not all the funding sources could be transferred to the general fund. The Information Technology Department anticipates cost-savings of the information technology functional consolidation to be $438,775 for all funds for the 2003-05 biennium.

Server and Operating System Infrastructure

The Budget Section received a report from the Information Technology Department regarding the future of the state's server and operating system infrastructure. The Information Technology Department presented the following four alternatives for addressing the future of the state's mainframe:

- Maintain the current mainframe environment.
- Outsource the mainframe environment.
- Rewrite the applications dependent upon the mainframe to operate on another platform.
- Migrate the applications dependent upon the mainframe to another platform.

The following cost analysis was provided relating to alternatives for addressing the future of the state's mainframe:

Alternatives	Ongoing Annual Costs
Maintain the current mainframe environment	$3,790,000
Maintain the current mainframe environment in the future	$4,030,000[1]
Outsource the mainframe environment	$5,100,000[2]
Migrate the applications to another platform	$1,865,000[3]
Rewrite the applications to another platform	Unknown

[1]Maintaining the current mainframe environment in the future is critically dependent on the availability of trained staff. The estimated ongoing annual costs associated with maintaining the current mainframe environment in the future includes $240,000 for three additional FTE positions and an associated training program.

[2]Outsourcing the mainframe environment involves utilizing an outside vendor to provide the mainframe environment. The vendor would be responsible for all software, hardware, and labor costs, and the state would be responsible for monitoring service levels. The estimated ongoing annual costs of $5,100,000 includes $4,500,000 for a contract with an outside vendor and $600,000 for expenses associated with network connectivity and service level administration.

[3]Migration involves moving the existing applications from the mainframe to another platform while performing as few changes as possible. One-time costs associated with migrating the state's applications dependent on the mainframe are $6,300,000, and the ongoing annual costs associated with migration are $1,865,000.

STATUS OF CONNECTND

The Budget Section received periodic reports from the Office of Management and Budget, North Dakota University System, and Information Technology Department regarding the status of the ConnectND project. ConnectND is an enterprise resource planning system that is a joint project between the state government and the North Dakota University System to implement a multimodule software system that includes a relational data base and applications for managing financial activities, purchasing, budgeting, human resources, payroll, asset management, and student information functions.

The Information Technology Department reported that the original contract agreement with PeopleSoft for the ConnectND project was for approximately $21.7 million but as of August 31, 2004, the cost of the project was $24,550,000. Reasons for the $2,850,000 increase in costs include changes due to higher education grants and contracts delay, the monthly payroll decision, and the delay in state implementation from September 1, 2004, to October 1, 2004.

The North Dakota University System reported that in June and July 2004 the North Dakota University System went into production with the PeopleSoft student, finance, and human resource modules at five additional campuses, including Bismarck State College, Lake Region State College, Williston State College, State College of Science, and Dickinson State University, which brought the total number of "live" sites to eight, including Mayville State University, Valley City State University, and the North Dakota University System. The University System also went "live" with the conversion to semimonthly payroll with a 15-day timelag for all campuses in July 2004.

At the end of July 2004, the State Board of Higher Education approved a delayed implementation plan for the grants and contracts module based on campus concerns regarding the readiness of the grants and contracts system. The delay provides an extended period for additional configuration and testing. The new implementation schedule for the remaining four campuses--University of North Dakota, North Dakota State University, Minot State University, and Minot State University - Bottineau--is to have the finance and human resource modules implemented by January 2005, with student records implementation beginning fall 2004 and completed by spring 2005. Student recruitment and admissions, which is part of the student system, was successfully implemented on the four remaining campuses in October 2004 as part of the phased implementation plan.

In July 2004 the State Board of Higher Education also approved a supplemental budget plan for the ConnectND project, which provides permanent support for the finance, student, and production environments and provides interim support for the student production environment until spring 2005 and finance and human resource until January 1, 2005, based on the delayed implementation schedule. The additional one-time and ongoing costs of approximately $4.1 million relating to higher education's implementation of the ConnectND system will be allocated as follows:

- $1.25 million in cost reductions from Maximus.
- $1.38 million from ConnectND budget funds.
- $600,000 from Higher Education Computer Network operating funds.
- $250,000 from State Board of Higher Education contingency funds.
- $480,000 from higher education institutions.
- $150,000 from the state contingency fund.

DEPARTMENT OF HUMAN SERVICES

Medical Assistance Program

The Budget Section received periodic reports from the Department of Human Services regarding the status of the medical assistance program. The Budget Section learned in May 2003 Congress passed the Jobs and

Growth Tax Relief Reconciliation Act of 2003, which provided $10 billion in additional federal money for Medicaid, of which North Dakota's share is approximately $19.6 million, with the intent the funds be used to ensure that needed care continue for low-income citizens. The $19.6 million the department estimates to receive is the result of the enhanced federal medical assistance percentage increasing from the originally estimated 68.31 to 71.31 percent through June 2004.

The Department of Human Services compared the appropriation approved by the 58th Legislative Assembly to the estimated funds necessary to maintain the Medicaid program as it was operated at the end of the 2001-03 biennium and determined an estimated shortfall of $8 million in general fund needs. When federal funds were factored in, the department estimated it would need to reduce the Medicaid program by approximately $26.2 million during the 2003-05 biennium. If $8 million of the $19.6 million of savings from the enhanced Medicaid funds was not utilized for the Medicaid program, the state would have to impose a combination of changes that would eliminate services, reduce the number of eligible Medicaid recipients, and reduce payments to providers. The department plans to use $8 million to fill the gaps that exist in the Medicaid program, including payments for inpatient hospital services, prescription drug expenditures, and payments for physician-related services. If the department uses $8 million of the $19.6 million, the remaining $11 million will be available for 2005-07 biennium appropriations. As of October 2004, $6.5 million has been deposited in the general fund.

The Legislative Council staff presented a memorandum to the committee relating to North Dakota's use of the federal funds made available to the state under the Jobs and Growth Tax Relief Reconciliation Act of 2003. The Legislative Council staff reported that Section 9 of 2003 Senate Bill No. 2012 requires the Department of Human Services to make whatever programmatic changes are necessary to operate the medical services program within the funding levels appropriated for the 2003-05 biennium, and the department may transfer appropriation authority between line items and between subdivisions but may not expend more than the total amount of the 2003-05 biennium appropriation without an expenditure authorization as provided for in NDCC Chapter 54-16. Therefore, the receipt of the $19.6 million of federal funds by the Department of Human Services for the medical services program may be received by the department to the extent the funds may be accommodated within the department's 2003-05 biennium spending authority.

The Budget Section learned the 3 percent increase in the federal medical assistance percentage ended June 30, 2004. On July 1, 2004, the federal medical assistance percentage returned to the regular matching rate of 68.31 percent for the remaining three months of the federal fiscal year. To maximize the federal funds, the department's staff worked many hours of overtime to process suspended Medicaid claims and to reduce the claims backlog. On October 1, 2004, the federal medical assistance percentage dropped .82 percent to 67.49 percent, and calculations indicate the federal medical assistance percentage will be further reduced effective October 1, 2005, to 65.16 percent, and preliminary information for the 2007 federal fiscal year beginning on October 1, 2006, indicates the federal medical assistance percentage will decrease to 63.54 percent. This will result in a federal medical assistance percentage reduction of 7.77 percent in a three-year period. It is estimated that the reduction in the federal medical assistance percentage will require the state to contribute approximately $34 million more from the general fund for the 2005-07 biennium to maintain the 2003-05 biennium program levels.

The department reported that Medicaid caseload numbers continue to decline since the beginning of the 2003-05 biennium. As of June 29, 2004, the caseload totaled 52,646, excluding the elderly and disabled whose coverage is only for Medicare Part B premiums and in some instances Medicare coinsurance and deductible amounts, and as of the end of July 2004, a total of 52,024 individuals were eligible for full Medicaid benefits.

Changes Made to the Medicaid Program

The Budget Section received a report from the Department of Human Services regarding changes made by the department to the Medicaid program. In an effort to avoid future deficit appropriations, the 58th Legislative Assembly instructed the Department of Human Services to establish service copayments or limits and make programmatic changes within the medical services program to operate the program within the funding levels approved by the Legislative Assembly for the 2003-05 biennium. Based on the direction of the Legislative Assembly, the Department of Human Services implemented the following cost-savings measures during the 2003-05 biennium:

- Cost-sharing limitations - This implemented additional copayments and limitations on services. Federal regulations prevent the imposition of copayments on children, pregnant women, or individuals in institutions.
- Eligibility - As of September 1, 2003, the department changed the amount of income that is disregarded in the family coverage group to disregard the first $120 in earned income plus one-third of the remaining amount. Previously, families were allowed to disregard the first 27 percent of earned income plus 50 percent for the next three months and 25 percent thereafter. This change does not generally affect the eligibility of children since they can qualify under either the poverty level group or the Healthy Steps program.
- Prescription drugs - The department implemented some major changes in the prescription drug program in the 2001-03 biennium, including copayments on brand name drugs, tablet splitting, quantity limits, and implementing a maximum allowable cost-pricing policy for a

substantial number of medications. The new initiative in the 2003-05 biennium implements the prior authorization program. As of April 28, 2004, the department implemented a prior authorization requirement for proton pump inhibitors (antiulcer) and antihistamines.

Child Care Assistance Program

The Budget Section received a report from the Department of Human Services regarding the status of the child care assistance program. The Budget Section learned that the increased usage of the child care assistance program with no change in the program rules created a situation in which projected spending was approximately $1.9 million more than the 2003-05 biennium appropriation. The $1.9 million increase in expenditures was the result of the following increases:

- $800,000 attributed to an increase in the number of children.
- $1,100,000 attributed to an increase in program costs.

As a result of contemplating a variety of cost-saving measures, the department decided to no longer pay child care for higher education students except for higher education students during their hours of employment. The department will also continue to pay child care for students in vocational education, students receiving certificates or a vocational training degree, or an associate of applied science degree. The committee learned this decision is consistent with child care services provided in many other states. As of April 2004 spending projections indicated the changes made to the child care assistance program will result in program spending within the amount appropriated by the 58th Legislative Assembly and available federal funds.

Transfers in Excess of $50,000

Pursuant to Section 7 of 2003 Senate Bill No. 2012, the Budget Section received a report from the Department of Human Services regarding transfers the department made between line items and between subdivisions in excess of $50,000. The transfers made by the department pursuant to this section are:

Description	General Fund	Federal/Other Funds	Transfer Total
Line item transfer - Long-term care budget[1]			
Grants line item	($150,000)		($150,000)
Grants - Medical assistance line item	$150,000		$150,000
Transfer funds from program/policy management to administration[2]			
Administration/support	$150,000		$150,000
Mental health and substance abuse	($150,000)		($150,000)
Move funding between human service centers[3]			
Northwest Human Service Center	($22,900)	($40,100)	($63,000)
Southeast Human Service Center	$22,900	$40,100	$63,000
Move national family caregiver funds from central office to human service centers[4]			
Aging services (grants line item)		($1,014,414)	($1,014,414)
Northwest Human Service Center		$56,695	$56,695
North Central Human Service Center		$158,891	$158,891
Lake Region Human Service Center		$68,913	$68,913
Northeast Human Service Center		$141,845	$141,845
Southeast Human Service Center		$183,941	$183,941
South Central Human Service Center		$149,422	$149,422
West Central Human Service Center		$198,812	$198,812
Badlands Human Service Center		$55,895	$55,895
Move funding from central office to South Central Human Service Center[5]			
Disability Services Division (grants line item)		($60,759)	($60,759)
South Central Human Service Center		$60,759	$60,759
Move funding from human service centers to State Hospital[6]			
State Hospital	$379,970		$379,970
Northwest Human Service Center	($75,929)		($75,929)
North Central Human Service Center	($50,000)		($50,000)
Lake Region Human Service Center	($90,539)		($90,539)
Northeast Human Service Center	($68,300)		($68,300)
South Central Human Service Center	($95,202)		($95,202)
Move funding from Developmental Center to State Hospital[7]			
State Hospital	$100,000		$100,000
Developmental Center	($100,000)		($100,000)

[1]The conference committee added funds for an increase in case management payment to counties. The funds were inadvertently added to the Grants line item instead of the Grants - Medical assistance line item.

[2]The deputy director position was left vacant to absorb a portion of the $1.5 million general fund reduction to administration/support made by the 58th Legislative Assembly.

[3]Funding was moved along with a FTE position for developmental disabilities case manager based on client caseload.

[4]Funding was initially included in central office until a plan was formulated.

[5]Federal funding was moved to the region based on client need.

[6]Budget reduction plans enacted to assist the State Hospital with part of the $2 million reduction made by the 58th Legislative Assembly.

[7]Budget reduction plans enacted to assist the State Hospital with part of the $2 million reduction made by the 58th Legislative Assembly.

Sexual Predator Treatment

The Budget Section received reports from the State Hospital regarding the status of the sexual offender program. The State Hospital reported that in 1997, the Legislative Assembly passed House Bill No. 1047 creating NDCC Chapter 25-03.3, which provided for the civil commitment of dangerous sexual predators. This chapter provides that if a respondent is found to be a sexually dangerous individual, he or she is committed to the care, custody, and control of the executive director of the Department of Human Services and the confinement, evaluation, and treatment of dangerous sexual offenders are provided at the State Hospital.

The Budget Section learned the State Hospital opened a second sexual offender unit on June 1, 2004, consisting of 10 beds to deal with the growth in the sexual offender population. The capacity of the new unit is 25 beds, so the hospital has the option for further expansion, if needed. With the addition of the second unit, the hospital has two secure services units totaling 32 beds, of which 28 beds are for evaluation and treatment of sexual offenders and four beds are reserved for competency evaluations, county jail transfers, and individuals who are mentally ill and dangerous. As of June 29, 2004, the secure sexual offender unit had 18 of the 22 beds occupied and the new sexual offender unit had 7 of the 10 beds occupied.

The State Hospital anticipated opening the new sexual offender unit by May 1, 2004, but actually opened on June 1, 2004, as the result of referral delays. The original cost estimate for operating the second sexual offender unit for the 2003-05 biennium was $1.1 million; however, the actual cost is anticipated to be less than $1.1 million due to the unit opening one month later than anticipated. The hospital anticipates receiving an additional seven referrals for evaluation by the end of 2004.

DEPARTMENT OF COMMERCE

Annual Audits of Renaissance Fund Organizations

The Budget Section received reports from the Division of Community Services, Department of Commerce, on the annual audits of renaissance fund organizations pursuant to NDCC Section 40-63-07. The Budget Section learned there are 20 cities with a renaissance zone and only five of those cities--Fargo, West Fargo, Casselton, Valley City, and Jamestown--have chosen to establish a renaissance fund organization. None of the cities manage their own funds but instead contract with Renaissance Ventures LLC to manage their respective renaissance fund organization. The audit for Renaissance Ventures LLC indicated that four cities have received investments totaling $2,950,000, which equates to the use of $1,475,000 in tax credits, and the Valley City renaissance fund organization has not received any investments. Of the $2,950,000, $1,490,000 was invested in three Fargo businesses and $200,000 in one Jamestown business. The audit also showed that the four cities have paid management fees to Renaissance Ventures LLC totaling $111,750 in 2002 and $62,500 in 2003. There are $1,025,000 of tax credits still available from the 1999 legislative authorization as well as the $2.5 million from the 2001 legislative authorization.

Annual Report on Job Web Site

The Department of Commerce reported to the Budget Section on the money spent to administer an Internet web site that provides career guidance and job opportunity services pursuant to NDCC Section 54-60-10. The Budget Section learned the objective of the web site *northdakotahasjobs.com* is to provide information to youth and others who are making career decisions on premier employers in the state, career opportunities offered, and internships available. The web site is linked with career service offices on North Dakota college campuses and is promoted to high school students through the annual Career Outlook.

The Department of Commerce reported it is not responsible for costs associated with administration, development, or maintenance of the web site. The web site is owned and maintained by Applied Distribution Group in Omaha, Nebraska. The Department of Commerce provides a minimum of a .5 FTE effort in promotion and marketing the web site to North Dakota employers, for which the department receives a commission on each employer subscription to the site. A promotional effort offered employers a no-cost member subscription for a trial period. Commissions earned on subscriptions by the department were minimal, totaling $2,580 through December 31, 2003, and expenditures by the Department of Commerce to support the web site marketing were $14,677 through December 31, 2003. The goal of the Department of Commerce is to receive enough in commissions to cover all the expenses of the web site by the end of the 2003-05 biennium so the department will not have to request an additional appropriation from the 59th Legislative Assembly for the web site for the 2005-07 biennium. The Workforce Development Division of the Department of Commerce received an appropriation of $150,000 relating to the web site efforts for the 2003-05 biennium.

WORKFORCE SAFETY AND INSURANCE

Status of the Risk Management Workers' Compensation Program

Pursuant to NDCC Section 65-04-03.1, Workforce Safety and Insurance reported to the Budget Section regarding the status of the risk management workers' compensation program. The Budget Section learned that 2001 House Bill No. 1015 established a single workers' compensation account for all state entities and the Risk Management Division of the Office of Management and Budget administers the program. The Risk Management Division entered into deductible contracts with Workforce Safety and Insurance for 143 consolidated accounts for coverage periods beginning July 1, 2001, and the deductible amount selected was $100,000 per claim. The results for the three coverage years July 1, 2001, through June 30, 2004, are:

Nonconsolidated guaranteed cost program premium		$10,966,092
Risk Management Division deductible premium paid to Workforce Safety and Insurance	$4,361,449	
Risk Management Division paid losses	3,272,159	
Risk Management Division pending losses (reserves)	1,071,226	
Less Risk Management Division combined premium and losses total		$8,704,834
Estimated savings for three-year period		$2,261,258
NOTE: Information as of August 31, 2004.		

Building Maintenance Account

Pursuant to NDCC Section 65-02-05.1, the Budget Section received a report from Workforce Safety and Insurance regarding the building maintenance account. The Budget Section learned that fiscal year 2004 was the first full year of operations for the Workforce Safety and Insurance office building--the Century Center. In addition to Workforce Safety and Insurance, the four-story building, consisting of 116,000 square feet of office space, houses four other state agencies, including the Department of Commerce, Parks and Recreation Department, Council on the Arts, and the Risk Management Division of the Office of Management and Budget. Construction of the Century Center was completed within both the original construction schedule and the budgeted amount of $12 million. Rental fees of $13 per square foot for office space and $5 per square foot for storage space will remain the same for the 2005-07 biennium.

The Century Center's largest operating expense is the payment made in lieu of taxes to the city of Bismarck, which was $150,090 for fiscal year 2004 and is anticipated to be approximately $270,000 for fiscal year 2005. Activity in the Century Center building maintenance account is:

Century Center Building Maintenance Account		
Fiscal year 2004		
Tenant rent payments	$441,000	
Workforce Safety and Insurance rent payment	186,000	
Miscellaneous billings	2,369	
Total revenue		$629,369
Operating expenses	$458,302	
Building maintenance	37,609	
Total expenses		$495,911
Account balance as of June 30, 2004		$133,458
Fiscal year 2005 (projected)		
Tenant rent payments	$441,000	
Workforce Safety and Insurance rent payment	186,000	
Total revenue		$627,000
Operating expenses	$591,950	
Building maintenance	33,600	
Total expenses		$625,550
Projected account balance as of June 30, 2005		$134,908

Workforce Safety and Insurance reported the building maintenance account balance is reserved for future expenses, such as parking lot repairs.

GAME AND FISH DEPARTMENT

Land Acquisition Requests

Pursuant to NDCC Section 20.1-02-05.1, the Budget Section received requests from the Game and Fish Department for the approval of land acquisitions.

Confluence of the Missouri and Yellowstone Rivers

The Budget Section learned the confluence of the Missouri and Yellowstone Rivers, near Williston, forms three parcels of wedge-shaped land and that two of the properties had been offered for sale. The Game and Fish Department was not requesting additional funds from the Budget Section because the funding for the land acquisition had already been approved by the 58th Legislative Assembly, but the department requested Budget Section approval for the acquisition in fee title of two of the three properties.

The first property proposed for acquisition, referred to as the Neu property, constitutes 388.46 acres of land on the south side of the joined rivers at their confluence for a total purchase price of $650,000 and consists of approximately 20 acres of irrigated cropland and the remaining acreage is dominated by river bottom woodlands and other natural wetland and meadow habitats. The Game and Fish Department proposed to acquire the property under a written agreement to provide $333,333 ($250,000 federal and $83,333 Game and Fish Department funds) to the American Foundation for Wildlife, which will provide the balance of $316,667 to acquire the property and subsequently donate the entire property to the Game and Fish Department.

Negotiations were underway for the second property, referred to as the Ochs property, and project partners hope to complete the purchase and transfer to the Game and Fish Department by the end of 2004. The Ochs tract is approximately 1,000 acres and the Game and Fish Department would not provide funding for the Ochs purchase but would receive it in fee title as a donation from other project partners.

The department proposes to manage both properties as a state wildlife management area under a written plan that complies with all state and local laws and the wildlife management area will be open to public hunting and other compatible recreation. The department will pay property taxes to McKenzie County and will work closely with the McKenzie County Weed Board to control noxious weeds.

Pursuant to NDCC Section 20.1-02-05.1, the Budget Section approved the Game and Fish Department request to acquire two parcels of land at the confluence of the Missouri and the Yellowstone Rivers in McKenzie County--one parcel consisting of 388.46 acres and the other approximately 1,000 acres.

East Bay of Devils Lake

The Budget Section learned the Game and Fish Department leases property from two parties for access to the East Bay boat ramp on Devils Lake. The two parties are the National Guard and a private individual, Mr. Shaffer. Mr. Shaffer does not want to renew his lease with the Game and Fish Department when it expires in May 2005 but instead wants to sell the property. The property for sale consists of 2.5 acres and has a purchase price of $60,000. The department reported that without the acquisition of Mr. Shaffer's property, the remaining leased property would have to be improved for boat ramp access by raising and expanding the area at an estimated cost in excess of $100,000.

Pursuant to NDCC Section 20.1-02-05.1, the Budget Section approved the Game and Fish Department request to acquire 2.5 acres of land at the East Bay of Devils Lake.

VETERANS HOME

Status of Veterans Home Strategic Plan

Pursuant to Section 4 of 2003 House Bill No. 1007, the Veterans Home reported periodically to the Budget Section regarding the status of the Veterans Home strategic plan. The Budget Section learned that the Veterans Home Governing Board contracted with Novus Consulting, Fargo, to assist in the development of the strategic plan. The strategic plan was adopted by the Veterans Home Governing Board on December 1, 2003. A management planning team is responsible for the implementation of the Veterans Home strategic plan, and the team meets weekly to work on the goals and objectives set forth in the plan.

Line Item Transfer

Pursuant to Section 6 of 2003 House Bill No. 1007, the Budget Section received a report on any Veterans Home line item transfers up to $150,000 for the 2001-03 biennium to implement changes in technology and telecommunications. The Budget Section learned the Veterans Home transferred $90,000 between line items toward the end of the 2001-03 biennium for necessary information technology and telecommunications upgrades at the Veterans Home.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Status of Contracting With Counties to House Female Inmates

Pursuant to Section 5 of 2003 House Bill No. 1506, the Budget Section received reports from the Department of Corrections and Rehabilitation and the county facility contracting to house state female inmates at its fall 2003 and summer 2004 meetings regarding the implementation and procedures of contracting with counties to house state female inmates. Please refer to the report of the Budget Committee on Government Services regarding details of the female inmate housing contract with the Dakota Women's Correctional Rehabilitation Center in New England.

OIL AND GAS DIVISION AND GEOLOGICAL SURVEY MERGER RECOMMENDATIONS

Pursuant to Section 14 of 2003 House Bill No. 1015, the Budget Section received a report on the Industrial Commission recommendations for the Oil and Gas Division and Geological Survey merger. Section 14 of 2003 House Bill No. 1015 directed the Industrial Commission to:

1. Review the implementation of the merger of the Oil and Gas Division and Geological Survey to be accomplished by July 1, 2005.
2. Consider allowing the Oil and Gas Division director to appoint the State Geologist.
3. Recommend a name change for the merged Oil and Gas Division and Geological Survey.
4. Identify efficiencies and savings that will result from the merger.
5. Present a report to the Budget Section before November 1, 2004, regarding the recommendations for the Oil and Gas Division and Geological Survey merger.
6. Report its findings and recommendations, together with any legislation required to implement the recommendations, to the 59th Legislative Assembly.

The Budget Section learned the Industrial Commission reviewed the implementation of the merger and developed a merger plan, including a proposed organizational chart and North Dakota Century Code revisions. In developing the merger plan, the Industrial Commission held a public hearing, followed by a 90-day written comment period, to receive comments and input from interested individuals and organizations. The Industrial Commission recommends the name of the merged Oil and Gas Division and Geological Survey to be the Department of Mineral Resources, and the Department of Mineral Resources would have one director and two assistant directors--one for the Oil and Gas Division and one for Geological Survey. The anticipated efficiencies of the merger would result in an estimated annual savings of $240,300, to be achieved by the elimination of the following positions--one administrative, one petroleum geology, two support, and one technician. Under the recommendation, the Industrial Commission would report its findings and make recommendations to the 59th Legislative Assembly.

Regarding the concern of conflict of interest by merging the Oil and Gas Division and Geological Survey, the Budget Section learned it would be the responsibility of the director of the Department of Mineral Resources to maintain a proper balance between the regulatory and research efforts.

OUTSOURCING EMPLOYEE POSITIONS

State Department of Health

Pursuant to Section 13 of 2003 House Bill No. 1004, the Budget Section received a report from the State

Department of Health regarding the status of outsourcing employee positions. The Budget Section learned that of the department's 314 FTE positions, 23.2 are located in other areas of the state and 1.4 are located in Bismarck but not in the State Department of Health complexes. Four temporary employees are located in other areas of the state and three temporary employees are located in Bismarck but not in State Department of Health complexes. The department enters into approximately 800 contracts each year and almost $68 million, or 52 percent, of the department's biennial budget is expected to be contracted in the 2003-05 biennium. There are a few out-of-state contracts with only one contract out of 800 in which a North Dakota bidder did not get the contract. When pursuing federal grants, it is standard operating procedure, in most cases, for the State Department of Health to contract rather than hire staff.

The Budget Section learned the State Department of Health has a couple of small contracts in Canada for air quality monitoring. An air quality monitor is located on land just across the United States/Canadian border and is rented from two landowners for $1,400 each.

Department of Human Services

The Budget Section received a report from the Department of Human Services regarding the department's outsourcing of employee positions. The Budget Section learned the department has five employing units, which have seven employees working in various places outside the department's normal worksites. The department expects this employment option to continue to grow in popularity and success.

The Budget Section received information from the Department of Human Services regarding the department's outsourcing of services. The Budget Section learned the department has over 600 contracts in effect and 7 percent are with out-of-state vendors. In the case of each of the 7 percent of out-of-state contracts, North Dakota vendors were given the opportunity to bid on the contracts.

One contract the department maintains with an out-of-state vendor is the electronic benefit transfer contract. In May 1995 the North Dakota Department of Human Services, in conjunction with the South Dakota Department of Social Services, entered into a contract for electronic benefit transfer services with Citicorp Electronic Financial Services, Inc. JPMorgan Electronic Financial Services, Inc., completed a purchase of all the stock in Citicorp Electronic Financial Services, Inc., in February 2004 but the contract the Department of Human Services had with Citicorp Electronic Financial Services, Inc., remains in place. The contract runs through June 30, 2005, at which time the departments have the option for two-year extensions. In 1999 Citicorp Electronic Financial Services, Inc., joined forces with Mphasis, which is headquartered in California and has call centers in Florida and India, to provide additional staffing for the customer service center. The call center functions through a computer system in Florida that answers the calls and has menu options for the clients. A client may speak to a trained customer service representative based in either Florida or India if the question cannot be answered by the menu options. The majority of calls are answered by the computer system and do not require assistance from a computer service representative.

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 the job insurance trust fund balance is running ahead of projections in reaching the 2007 solvency target. The solvency target is calculated by determining a high-cost multiplier and applying it against the projected total wages in the state. The trust fund is projected to reach the solvency target, as required by 1999 House Bill No. 1135, without an increase in tax rates in the next three years and may be able to reduce tax rates in the last year of the "solvency target" period. Job Service North Dakota reported that unemployment insurance tax rates remain constant for 2004 as a result of the trust fund progress toward solvency.

PERFORMANCE ASSURANCE FUND

Pursuant to NDCC Section 49-21-31, the Budget Section received a report from the Public Service Commission on the payments received and expenditures from the performance assurance fund. The Public Service Commission administers the performance assurance fund created by 2003 House Bill No. 1052. The fund balance as of January 1, 2004, was $118,307, of which $54,231 was received in the 2001-03 biennium and $65,843 had been received in the first six months of the 2003-05 biennium. Expenditures paid in 2003 were $1,767. Once the receipts in a biennium reach $100,000, the excess will be deposited into the general fund.

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 and therefore no transfers were made to the state tuition fund.

STATUS OF THE STATE BOARD OF AGRICULTURAL RESEARCH AND EDUCATION

Pursuant to 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 was created by the 55th Legislative Assembly (1997) and the

board's membership was modified in 1999 to include two members of the Legislative Assembly. The board may recommend some changes to the 59th Legislative Assembly, including changing the members' terms from one 5-year term to two 4-year terms.

The State Board of Agriculture Research and Education provided information on the following nine duties of the board as provided in NDCC Section 4-05.1-19:

1. Determine the causes of any adverse economic impacts on crops and livestock produced in North Dakota.
2. Develop ongoing strategies used for the provision of research solutions to negate adverse economic impacts on crops and livestock produced in North Dakota.
3. Make available financial resources, including grants and salaries and equipment and facilities to implement the strategies subject to approval by the State Board of Higher Education.
4. Develop an annual budget for the operations of the Agricultural Experiment Station and the North Dakota State University Extension Service.
5. Develop a biennial budget request and submit that request to the State Board of Higher Education on or before March 1 of every even-numbered year.
6. Maximize the use of existing financial resources, equipment, and facilities to generate the greatest economic benefit from research and extension efforts and to promote efficiency.
7. Annually evaluate the results of research and extension activities and expenditures and report the findings to the Legislative Council and the State Board of Higher Education.
8. Advise the administration of North Dakota State University regarding the recruitment and selection of the vice president of Agricultural Affairs, the Extension Service director, and the station director.
9. Develop ongoing strategies for the dissemination of research information and the best practices for management of the Extension Service.

CORRESPONDENCE FROM ETHANOL PLANTS

Pursuant to NDCC Section 4-14.1-07, 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 2002. The Budget Section learned that after deducting the payments received from the state, the Alchem plant produced a loss. The Alchem plant and the Archer Daniels Midland Company plant received production incentives from the state during calendar year 2003. The Budget Section learned both plants produced a loss after deducting the payments received by the state.

LEGISLATIVE HEARINGS FOR FEDERAL BLOCK GRANTS

Background

The Budget Section was informed the Legislative Council staff contacted state agencies receiving federal funds to determine which agencies receive block grants that require legislative hearings, and the results of the survey revealed only one block grant with that requirement and that is the community services block grant administered by the Department of Commerce Division of Community Services. The required public hearing will be held as part of the hearing on the appropriation for the Department of Commerce during the 2005 legislative session.

Recommendation

The Budget Section recommends Senate Concurrent Resolution No. 4001 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 59th Legislative Assembly through September 30, 2007.

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, 2005, and June 30, 2007. The report indicated that for the 2003-05 biennium, state agencies and institutions anticipate receiving $2,199,000,000 of federal funds, approximately $100 million more than the amount appropriated by the 58th Legislative Assembly. For the 2005-07 biennium, state agencies and institutions anticipate receiving approximately $2,192,000,000 of federal funds. The 2005-07 biennium requests, if funded, would require $332,077,596 of general fund matching dollars, $9,455,747 more than that provided for the 2003-05 biennium. The 2005-07 amounts are preliminary as several agencies had not filed their 2005-07 budget requests.

LEGISLATIVE COUNCIL STAFF REPORTS

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

- *58th Legislative Assembly Analysis of Changes to the Executive Budget 2003-05 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.
- *58th Legislative Assembly Budget Status Report for the 2003-05 Biennium.* The report provided information on the status of the general fund and estimated June 30, 2005, ending balance, legislative changes to general fund revenues, and legislative appropriation changes to the executive recommendation.

- *2003-05 Biennium Report on Compliance With Legislative Intent.* The report provided information regarding agency compliance with the legislative intent included in the agencies' 2003-05 biennium appropriations, information on the status of selected special funds, and agencies' activities through December 31, 2003, and later, as appropriate.
- *North Dakota State Agency and Institution Vacant Positions as of June 30, 2004.* The report provided information regarding vacant positions within state agencies as of June 30, 2004, including:

  Agency name, vacant position number, and description.

  Date the position was vacated.

  Number of months the position was vacant as of July 1, 2004.

  Agency response regarding the position vacancy/status of the position.

  Estimated salary and fringe benefit savings from the vacant positions by general fund and special funds.
- *North Dakota State Agency "Off-Budget" Positions for the 2003-05 Biennium.* The report contains a description of "off-budget" positions and lists each "off-budget" position by agency.

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 into a report, including information regarding state institution land and buildings utilization and will be submitted to the Appropriations Committees during the 2005 legislative session.

The Budget Committee on Government Services, Representative Ron Carlisle, Chairman, toured the State Penitentiary, Missouri River Correctional Center, Youth Correctional Center, Roughrider Industries, State Hospital, James River Correctional Center, and Developmental Center.

The Budget Committee on Health Care, Senator Judy Lee, Chairman, toured the Veterans Home, Fort Abercrombie Historic Site, and Southeast Human Service Center.

The Budget Committee on Human Services, Representative Clara Sue Price, Chairman, toured the School for the Deaf, Lake Region Human Service Center, North Central Human Service Center, state fairgrounds, and West Central Human Service Center.

The Higher Education Committee, Senator Ray Holmberg, Chairman, toured the University of North Dakota, Lake Region State College, North Dakota Vision Services - School for the Blind, Mill and Elevator, Mayville State University, North Dakota State University, Main Research Center, Bismarck State College, Minot State University - Bottineau, Forest Service, Minot State University, North Central Research Center, Valley City State University, State College of Science, Dickinson State University, Dickinson Research Center, Williston State College, and the Williston Research Center.

AGENCY REQUESTS AUTHORIZED BY THE EMERGENCY COMMISSION

Pursuant to NDCC Sections 54-16-04, 54-16-04.1, 54-16-04.2, and 54-16-09, the Budget Section considered agency requests that had been authorized by the Emergency Commission and forwarded to the Budget Section. From the June 24, 2003, meeting to the October 5, 2004, meeting, the Budget Section considered 70 requests, all of which were approved except for the Veterans Home request to add 8.28 FTE positions for the eight additional skilled care nursing beds approved by the 58th Legislative Assembly. The 69 Emergency Commission requests approved included approval of a total of $126,271,670 of federal funds, $6,818,119 of other funds, and line item transfers totaling $20,980,100 and 7 FTE positions were authorized for the remainder of the 2003-05 biennium. The attached appendix provides a description of each agency request considered by the Budget Section.

Status of the State Contingency Fund

Five requests authorized by the Emergency Commission were to obtain funds from the state contingency fund. The balance of the state contingency fund is:

State Contingency Fund		
2003 legislative appropriation		$500,000
Emergency Commission requests		
Department of Veterans Affairs (#1505)	$25,000	
Department of Agriculture (#1518)	5,400	
Veterans Home (#1519)	208,000	
North Dakota University System (#1520)	150,000	
Attorney General's office (#1523)	5,000	
Total of Emergency Commission requests for state contingency funds		$393,400
State contingency fund balance - October 2004		$106,600

OTHER REPORTS

The Budget Section received a report from the Bank of North Dakota on the implementation and progress of 2003 Senate Bill No. 2335 relating to the Bank's investment in alternative and venture capital investments and early-stage capital funds. The provisions of 2003 Senate Bill No. 2335 allow the Bank of North Dakota to invest up to $5 million in North Dakota alternative and venture capital investments and early-stage capital funds, and the funds can be invested directly into a project or can be lent to the Development Fund for investment in a project. The Bank is analyzing the possibility of creating a small business investment company that would allow funds to be leveraged in a 2-to-1 ratio. The committee learned the marketing efforts for the program have been low-key until the exact course of the fund is determined, but the Bank of North Dakota along with the North Dakota Development Fund, Inc., have been marketing the program, as appropriate.

The Budget Section received a report from the State Department of Health on bioterrorism funding. The State Department of Health was appropriated approximately $20 million of federal funds for bioterrorism preparedness and response for the 2003-05 biennium. Expenditures as of June 2004 were approximately $5.8 million, of which local public health units received approximately $1.3 million. The United States Department of Health and Human Services is implementing a new city readiness initiative to provide higher levels of funding for public health emergency preparedness for 21 of the nation's largest cities located in 17 states. If this pilot project is successful, the result may be the addition of another 20 cities to the program, none of which are located in North Dakota. The city readiness initiative pilot project is funded by reprogramming approximately $55 million from state public health emergency preparedness programs to the city readiness initiative, resulting in states receiving decreased funding for the 2004 federal fiscal year. North Dakota received approximately $6.7 million for the federal fiscal year 2003 for public health emergency preparedness but will receive approximately $5.2 million, or approximately $1.5 million less, for federal fiscal year 2004.

This report presents Budget Section activities through October 2004. 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 59th Legislative Assembly in January 2005.

APPENDIX

Pursuant to NDCC Sections 54-16-04, 54-16-04.1, 54-16-04.2, and 54-16-09, the Budget Section considered 70 agency requests that were authorized by the Emergency Commission. All requests were approved by the Budget Section, with the exception of a request from the Veterans Home for an additional 8.28 FTE positions as noted. The following is a list of agency requests approved through October 2004:

Adjutant General

- June 24, 2003 - To receive $81,000 from the Emergency Commission's contingency fund and to increase other funds spending authority to accept the funds for expenses related to fire-fighting missions conducted in McLean County in April 2003 ($31,000) and for a reserve for unforeseen future disasters ($50,000).
- January 14, 2004 - To accept federal funds from the National Guard Bureau and increase the Army Guard contracts line item by $9 million for construction of a new UH60 hangar and an addition to an existing building at the National Guard's air facility in Bismarck.

Department of Agriculture

- October 15, 2003 - To increase federal funds spending authority and the noxious weeds line item by $203,300 to accept funds from the United States Forest Service to provide funds to county weed boards for noxious weed control, including leafy spurge and other noxious weeds.
- October 15, 2003 - To increase federal funds spending authority and the Board of Animal Health line item by $577,288 to accept funds from the United States Department of Agriculture for Johnes disease control, homeland security, scrapie control, swine health production, foot-and-mouth disease, and bovine spongiform encephalopathy.
- October 15, 2003 - To increase federal funds spending authority and the grants line item by $60,000 to accept funds from the United States Department of Agriculture for reimbursement of a portion of certification expenses incurred by certain organic producers, handlers, and processors as part of the national organic program.
- April 13, 2004 - To increase spending authority by $150,190 to accept federal Environmental Protection Agency passthrough funds from the State Department of Health for the Project Safe Send pesticide disposal program.
- June 29, 2004 - To increase federal funds spending authority and to accept $83,500 of federal funds from the United States Department of Agriculture for salaries and wages ($47,600) and operating expenses ($35,900) to identify exotic plant pests as potential biosecurity threats, coordinate and conduct pest destruction surveys, and develop response plans. This request includes one new FTE position.
- October 5, 2004 - To increase spending authority and the Board of Animal Health line item by $868,272 to receive federal passthrough funds from the State Department of Health ($125,000) for development of emergency management plans related to foreign animal diseases; federal United States Department of Agriculture grants ($743,272) for control of animal agriculture-related diseases, including Johnes disease, swine protection, scrapie, and chronic wasting disease; and for assessment and implementation of the National Identification System.

Attorney General

- April 13, 2004 - To increase other funds spending authority by $200,000 to accept funds from other states involved in a multistate antitrust lawsuit challenging Oracle's bid to take over PeopleSoft. North Dakota has been asked by the multistate group to administer the multistate funding for the lawsuit.

Department of Career and Technical Education

- January 14, 2004 - To increase federal funds spending authority by $198,700 to accept funds from the United States Department of Education fund for the improvement of education (FIE) program for the operating expenses line item ($91,300) and the grants line item ($107,400) to update curriculum and to offer training opportunities that reflect changes in trends in the information technology field.
- January 14, 2004 - To accept federal passthrough funds from Job Service North Dakota and increase the operating expenses line item by $180,000 to develop improved career decision-making tools, a web site and integrated curriculum for use by youth to focus on career opportunities in North Dakota, and to pilot national/industry skill testing and improve the data collection system to meet federal reporting requirements.
- January 14, 2004 - To increase other funds spending authority and the operating expenses line item by $70,000. The funds are available from the Cisco Academy and will be used for training instructors and evaluating agency programs.
- January 14, 2004 - To accept other passthrough funds from Workforce Safety and Insurance and increase the grants line item by $69,800 to enhance safety training and student protection by purchasing safety equipment for injury prevention for high school construction technology programs and college construction craft programs.

Department of Commerce

- June 24, 2003 - To increase federal funds appropriation authority by $3.5 million to accept and spend funds from the Department of Human Services as a result of LIHEAP expenditures being less than the funding made available. These available funds may be used for the

Division of Community Services weatherization assistance program.

- January 14, 2004 - To increase the operating expenses line item by $450,000 and the grants line item by $306,129. Of the $756,129 request, $381,129 is federal funds from the Department of Energy's state energy program and $375,000 is petroleum violation escrow dollars returned to the state as a result of federal court cases relating to petroleum products purchased by the state during the period of federal price controls. Of the $381,129 of federal funds, $306,129 will be distributed as grants relating to energy efficiency and renewable energy program activities and $75,000 is for operating expenses such as professional services, contracts, travel, printing, etc. The $375,000 of special funds will be used for the Governor's statewide ethanol marketing initiative to increase the percentage of vehicles using ethanol in North Dakota.
- January 14, 2004 - To increase federal funds spending authority by $2,175,000 for the weatherization heating and cooling program. The program assists eligible low-income households reduce expenditures for utilities by repairing or replacing residential heating and cooling systems. The request results from federal funds available for the program being more than anticipated in the department's 2003-05 biennium budget.
- January 14, 2004 - To increase federal funds spending authority by $100,000 to provide a passthrough federal grant to the University of North Dakota for a special fuel cell project of the Mechanical Engineering Department of the University of North Dakota. Special project grants are available to state energy offices from the federal Department of Energy.
- January 14, 2004 - To increase federal funds spending authority by $1,089,300 for providing grants to local community action agencies to use for providing housing for homeless individuals and families with disabilities.
- January 14, 2004 - To increase federal funds spending authority by $1,276,960 for salaries and wages ($39,600), operating expenses ($237,360), and grants ($1 million), relating to the AmeriCorps and Learn to Serve projects. This request was passed by the Emergency Commission during the January 12, 2004, special meeting.

Department of Corrections and Rehabilitation

- June 24, 2003 - To transfer $725,000 of spending authority from the security and safety line item to the support services line item for deficiencies in funding for medical expenses related to the retention of nurses as well as expenses for pharmaceuticals and institutional fees.
- June 24, 2003 - To transfer $100,000 of spending authority from the institutional offender services line item to the victim services line item to pay pending crime compensation claims.
- January 14, 2004 - To increase federal funds spending authority and the juvenile community services line item by $820,779 to accept federal funds from the United States Department of Justice to develop and implement a serious and violent juvenile offender-reentry project to address the challenges of recidivism, substance abuse, and physical and mental health and provide support in the areas of workforce participation, housing, and faith-based support.

Division of Emergency Management

- June 24, 2003 - To receive $149,479.04 from the Emergency Commission's contingency fund and to increase other funds spending authority to reimburse federal agencies for expenses related to firefighting activities in July 2002 and April 2003 - Emergency Commission approved with the added stipulation that any unused funds due to lower than anticipated invoicing by federal agencies are to be returned to the state contingency fund.
- October 15, 2003 - To increase the operating line item by $159,000 of federal funds received through the State Department of Health to conduct incident command training in the eight bioterrorism planning regions of the state.
- October 15, 2003 - To increase federal funds spending authority by $13.2 million for salaries and wages ($300,500); operating expenses ($127,000); capital assets ($33,000); and grants ($12,739,500). This request includes three new FTE positions.
- January 14, 2004 - To increase federal and special funds spending authority relating to federal emergency relief funding ($1,280,345) and state disaster loan proceeds ($170,713) for disaster costs associated with the severe summer storms and high winds in June 2003 in Barnes and Cass Counties. The request includes the authority for the division to obtain a $170,713 loan from the Bank of North Dakota pursuant to North Dakota Century Code Section 37-17.1-23 to pay the estimated state share of the 2003 disaster. Repayment of the loan will be requested as a deficiency appropriation from the 2005 Legislative Assembly.
- January 14, 2004 - To increase federal funds spending authority from the federal Department of Homeland Security by $19,536,000 for salaries and wages ($400,000), operating expenses ($432,234), and grants ($18,703,766). The additional funds relate to North Dakota's allocation of federal fiscal year 2004 Homeland Security appropriations. The funds will be distributed under the homeland security program ($14,828,000), law enforcement terrorism prevention program ($4,400,000), and citizen corps program ($308,000). The division is required to distribute 80 percent of the funding to

local governments. The request includes two new FTE positions and one temporary position within the Division of Emergency Management. Positions will be used for duties relating to Homeland Security intelligence management systems, administration, and operations teams as well as the administration of funding awards to local jurisdictions.

- June 29, 2004 - To increase federal and special funds spending authority by $7,516,231 relating to federal emergency relief funding ($6,607,104) and state disaster loan proceeds ($909,127 - from a Bank of North Dakota loan secured according to NDCC Section 37-17.1-23) for disaster costs associated with the snow emergency declaration in Dunn, McHenry, McKenzie, McLean, Mercer, and Ward Counties and the Fort Berthold Indian Reservation in January 2004 and the flooding emergency declaration in Benson, Cavalier, Grand Forks, Griggs, Nelson, Pembina, Ramsey, Steele, Traill, and Walsh Counties and the Spirit Lake Nation in March 2004.

Department of Financial Institutions

- April 13, 2004 - To increase special funds spending authority by $62,000 to utilize existing special funds for the operating line item ($62,000) for legal fees and court costs ($52,000) and for financial literacy training ($10,000).

Game and Fish Department

- April 13, 2004 - To increase spending authority by $550,000 to accept federal funds from the United States Fish and Wildlife Service ($350,000) and other funds from the game and fish operating fund ($200,000) for the grants line item ($550,000) to be used for repairs, extensions, and maintenance on boat ramp access locations on Lake Sakakawea.
- June 29, 2004 - To increase federal funds spending authority and the grants line item by $80,000 to accept federal funds from the United States Fish and Wildlife Service Federal Aid in Wildlife Restoration Act for shooting range improvements with priority given to groups that support the hunter education program.
- June 29, 2004 - To increase spending authority by $250,000 to accept federal funds from the United States Fish and Wildlife Service ($75,000 - funding provided by federal gas tax on boat fuel) and other funds from the game and fish operating fund ($175,000) for the capital improvements line item ($250,000) to be used to improve and relocate water access boat ramps at Devils Lake.

State Department of Health

- June 24, 2003 - To increase 2003-05 federal funds spending authority and the operating line item by $781,889 to fund a University of North Dakota study relating to the circumstances and characteristics of North Dakotans who do not have health insurance and to devise a plan to increase the number of people with health insurance and to improve access to health care services.
- October 15, 2003 - To increase federal funds spending authority from the Centers for Disease Control and Prevention bioterrorism grant ($127,000) and special funds spending authority from air contaminant program fees ($208,000) and the capital assets line item by $335,000 for additional costs to complete the east laboratory building remodeling project.
- October 15, 2003 - To increase federal funds spending authority by $300,000 and the salaries and wages line item ($105,000) and operating line item ($195,000) to accept funds from the Centers for Disease Control and Prevention for a comprehensive cancer control planning program. This request includes one new FTE position.
- October 15, 2003 - To increase federal funds spending authority by $6,540,000 and the salaries and wages line item ($150,000), operating line item ($2.4 million), capital assets line item ($650,000), and grants line item ($3,340,000) to accept new funds from the Health Resources and Services Administration (HRSA) ($2.6 million) and expend carryover funds from HRSA ($470,000) and the Centers for Disease Control and Prevention ($3,470,000) for a chemical terrorism preparedness and response program.
- April 13, 2004 - To increase federal funds spending authority and the grants line item by $1,065,000 to accept funds from the United States Department of Justice for the Safe Havens supervised visitation and safe exchange grant program ($800,000) and for the encourage arrest policies and enforcement of protection orders program ($265,000). The grant will be awarded to the North Dakota Council on Abused Women's Services for providing safe places for visitation and exchange of children.
- April 13, 2004 - To increase federal funds spending authority and the grants line item by $500,000 to accept funds from the Environmental Protection Agency to provide direct assistance to communities to access and remediate Brownfield sites (city, county, or development organization-owned properties that are underdeveloped or underutilized due to actual or perceived contamination).
- April 13, 2004 - To increase federal funds spending authority and to accept $1.2 million from the Centers for Disease Control and Prevention for salaries and wages ($55,000), operating expenses ($553,000), capital assets ($192,000), and the grants line item ($400,000) to expand testing and reporting for the West Nile virus program, mosquito program, hepatitis testing, and for severe acute respiratory syndrome (SARS).

State Historical Society

- October 15, 2003 - To increase federal funds spending authority and the capital assets line item by $901,000 to accept funds from Housing and Urban Development ($850,000) and Institute of Museum and Library Services ($51,000) to complete the Missouri-Yellowstone Confluence Interpretive Center and the military barracks at the Fort Buford Historic Site near Williston.
- October 15, 2003 - To increase federal funds spending authority by $220,000 to accept pass-through funds granted to the Department of Transportation by the United States Department of Transportation ($100,000) and federal funds from the United States Bureau of Land Management ($52,000) and the United States Department of Interior, Federal Historic Preservation ($68,000) for the salary line item ($120,000), the operating line item ($92,000), and the capital assets line item ($8,000) for continued development and enhancement of a geographic mapping system for cultural sites.
- October 15, 2003 - To increase federal funds spending authority by $150,000 to accept federal funds from the United States Bureau of Reclamation for the salaries line item ($120,000) and the operating line item ($30,000) for developing a data base of Bureau of Reclamation collections for which the State Historical Society is the curator.
- October 15, 2003 - To increase federal funds spending authority and the capital assets line item by $250,000 to accept passthrough funds granted to the Department of Transportation by the United States Department of Transportation enhancement grant program for improvements at the Gingras State Historic Site near Walhalla.

Department of Human Services

- June 24, 2003 - To transfer $200,000 from the operating line item of the management subdivision and $2,430,100 of the human service center operations line items to the grants - medical assistance line item in the economic assistance subdivision to provide a total of $2,630,100 to use as state matching funds for the medical assistance program and to increase federal funds spending authority by $22 million for the federal share of medical assistance payments associated with deficiency appropriations provided by the 2003 Legislative Assembly of $16.3 million from the health care trust fund and permanent oil tax trust fund.
- June 24, 2003 - To increase federal funds spending authority by $2,693,000 and other funds spending authority of $472,000 from third-party collections to provide a total of $3,165,000 for providing funding for substance abuse prevention and treatment programs at the North Central ($850,000), Lake Region ($35,000), Northeast ($730,000), Southeast ($1,075,000), and South Central ($475,000) Human Service Centers.
- June 24, 2003 - To increase federal funds spending authority by $2,750,000 for providing grants in the children and family services program for foster care and subsidized adoption services.
- June 24, 2003 - To transfer appropriation authority from the operating expenses line item to the grants - assistance payments line item of the economic assistance subdivision in the amount of $2,753,000 for providing additional funding under the low-income home energy assistance program (LIHEAP) for the remainder of the 2001-03 biennium.
- April 13, 2004 - To increase federal funds spending authority by $16 million, of which $13.4 million is for low-income home energy assistance program (LIHEAP) grants for increased fuel costs and weatherization and $2.6 million is for food stamp program grants.
- April 13, 2004 - To increase federal funds spending authority by $2.3 million for subsidized adoption and for the foster care therapeutic program, resulting from additional children being eligible for federal reimbursement under the subsidized adoption program and more children in foster care requiring therapeutic services than anticipated in the budget. The federal funds require state matching dollars; however, the department has general fund money and other funds from additional child support collections available within its current budget to provide the state match of approximately $960,000.
- October 5, 2004 - To increase federal funds spending authority by $261,150 for the family caregiver program to provide additional support services for Alzheimer's patients and their families, to provide early dementia identification, treatment options, and caregiver respite.
- October 5, 2004 - To increase federal funds spending authority and the aging services line item by $300,000 to support the single point of entry into services to increase access to and utilization of home and community-based services for elderly people age 60-plus and people with disabilities.

Indian Affairs Commission

- October 15, 2003 - To receive federal pass-through funds from the Department of Human Services and increase the operating line item by $85,500 to design a framework for a culturally congruent model for home and community-based care for American Indian aged and disabled.

Department of Insurance

- October 15, 2003 - To increase federal funds spending authority by $150,000 to accept carryover funds from the Centers for Medicare and Medicaid Services (CMS) for the operating line item for the senior health insurance counseling program created for Medicare beneficiaries who have questions about coverage, claims, and appeals.

Department of Labor

- October 15, 2003 - To increase federal funds spending authority by $375,000 and the salaries and wages line item ($100,000) and operating line item ($275,000) to accept federal funds from conducting investigations of employment discrimination complaints for the Equal Employment Opportunity Commission and from conducting investigations of housing discrimination complaints for the Department of Housing and Urban Development.

Office of Management and Budget

- June 24, 2003 - To transfer $57,000 of spending authority from the operating line item to the salaries and wages line item ($22,000) and equipment line item ($35,000) for higher than anticipated costs related to overtime and fringe benefit costs and the replacement of analog radio base stations with digital base stations in accordance with the plan for the replacement of the State Radio infrastructure.
- October 15, 2003 - To increase federal funds spending authority by $1,127,500 from the United States Department of Homeland Security and the operating line item ($127,500) and capital assets line item ($1 million) to upgrade the communications infrastructure from an analog to a digital environment.
- October 15, 2003 - To receive federal passthrough funds from the Division of Emergency Management and increase the operating line item by $250,000 for the development of a computer-aided dispatch center for State Radio.
- October 15, 2003 - To accept federal funds from the United States Department of Homeland Security and increase spending authority by $300,000 and the operating line item ($288,663) and capital assets line item ($11,337) for development of a web site to support the state's continuum of government project and fund state employee software training to develop continuity of operations and continuum of government plans.
- January 14, 2004 - To receive federal passthrough funds from the Division of Emergency Management and to increase spending authority by $2,115,252 from the United States Department of Homeland Security grants ($1,761,652) and federal emergency management performance grants ($353,600) in the salaries and wages line item ($272,000), operating expenses line item ($681,600), and capital assets line item ($1,161,652) to upgrade the communications infrastructure.
- April 13, 2004 - To increase spending authority and the operating line item by $90,000 to accept federal bioterrorism passthrough funds from the State Department of Health to upgrade from an analog to digital emergency communications system.
- October 5, 2004 - To increase special funds spending authority and the operating line item by $300,000 to use funds from the risk management fund to purchase a new risk management information system for the purpose of documenting incidents, claims, and lawsuits.

North Dakota University System

- October 5, 2004 - To receive $150,000 from the Emergency Commission's contingency fund and to increase spending authority to accept the funds to cover a portion of unanticipated expenses related to a delay in the implementation of the state's enterprise resource planning system initiative, commonly known as the ConnectND system. A total of $4.1 million in additional costs is anticipated, of which $150,000 is being asked for from the state contingency fund.

Parks and Recreation Department

- June 24, 2003 - To transfer $140,000 of spending authority from the operating line item to the equipment line item for the purchase of a snowmobile trail groomer.

Protection and Advocacy

- January 14, 2004 - To increase federal funds spending authority and the protection and advocacy line item by $1,270,981 to accept federal funds from the United States Department of Education, Title III program, to establish an alternative financial loan program (AFLP) for expanding personal financing options for individuals with disabilities in purchasing assistive technology devices and services.

State Tax Commissioner

- April 13, 2004 - To increase federal funds spending authority and the operating line item by $150,000 to accept passthrough funds from the Department of Transportation for developing an electronic processing system for motor fuels tax returns.

Veterans Home

- June 24, 2003 - To transfer $75,000 of spending authority from the salaries line item to the operating line item for additional unanticipated expenses related to the Health Insurance Portability and Accountability Act, performance audit fees, board member meeting and travel costs, and costs related to hiring the new administrator and accounting manager.
- June 24, 2003 - To add 8.28 full-time equivalent positions to the existing 2003-05 appropriation for additional staffing needed for the addition of eight skilled care nursing beds approved by the 2003 Legislative Assembly.

  The Budget Section denied this request on a roll call vote and approved a motion to request the Veterans Home report to the fall 2003 Budget Section meeting regarding its staffing needs and for the Budget Section to reconsider the request at that time. At the

October 15, 2003, Budget Section meeting, the governing board of the Veterans Home requested this Emergency Commission request be withdrawn.

- April 13, 2004 - To increase federal funds spending authority and the operating line item by $66,531 to accept a laundry remodeling grant recently made available from the Veterans Administration relating to a project completed in 1993. The grant will be used for expenses relating to strategic plan funding, consulting fees, and software conversion and training fees.
- June 29, 2004 - For $208,000 from the state contingencies fund and to increase spending authority by $226,000 from transfer authority ($208,000) and other funds from resident copayments ($18,000) for capital assets ($60,000) and operating expenses ($166,000) to establish an in-house pharmacy. The pharmacy will provide medications to the Veterans Home basic care residents. The Fargo Veterans Administration Medical Center, which currently provides medications to these residents, will cease providing this service on January 1, 2005. The Emergency Commission added the stipulation that the Veterans Home first verify with the Veterans Administration whether it is mandatory for the pharmacy to be onsite and, if not, that the Veterans Home is to research other options with local area pharmacies to possibly become a contract depository for medications purchased through the Fargo Veterans Administration Medical Center and to dispense prescriptions onsite to residents and that any funds not used due to lower than anticipated costs be returned to the contingency fund pursuant to NDCC Section 54-16-08.

State Water Commission

- January 14, 2004 - To increase special funds spending authority from the resources trust fund and the commission's water and atmospheric resources line item by $3 million and to transfer $14.5 million of spending authority within the special funds line item from the water development trust fund to the resources trust fund for water projects.

BUDGET COMMITTEE ON GOVERNMENT SERVICES

The Budget Committee on Government Services was assigned responsibilities in three areas. Section 6 of House Bill No. 1506 directed a study of the long-term prison needs of the state and House Concurrent Resolution No. 3037 directed a study of the needs of individuals with mental illness, drug and alcohol addictions, and physical or developmental disabilities.

North Dakota Century Code Section 54-40-01 provides that between legislative sessions a committee of the Legislative Council may approve any agreement entered into by a state agency with the state of South Dakota to form a bistate authority to jointly exercise any function the agency is authorized to perform by law. The Legislative Council assigned this responsibility to the committee.

Committee members were Representatives Ron Carlisle (Chairman), Bette B. .Grande, Pam Gulleson, Joe Kroeber, Ralph Metcalf, Darrell D. Nottestad, Chet Pollert, Louise Potter, and Amy Warnke and Senators Richard Brown, Duaine C. Espegard, Joel C. Heitkamp, Ed Kringstad, Elroy N. Lindaas, and Stanley W. Lyson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2004. The Council accepted the report for submission to the 59th Legislative Assembly.

LONG-TERM PRISON NEEDS

Pursuant to Section 6 of 2003 House Bill No. 1506, the committee studied the long-term needs of state inmates and whether the Department of Corrections and Rehabilitation should continue to contract to house state female inmates with county jails or if the state should expand the prison system. As part of this study, the committee received testimony from representatives of the Department of Corrections and Rehabilitation and the Dakota Women's Correctional Rehabilitation Center in New England regarding contract housing of state female inmates; reviewed inmate populations, sentence lengths, and recidivism rates; reviewed the condition of the east cellhouse at the State Penitentiary; reviewed land owned by the Department of Corrections and Rehabilitation; received testimony regarding the state's criminal justice process from arrest to release; and reviewed the effectiveness of alternatives to incarceration.

Department of Corrections and Rehabilitation

Background

The Department of Corrections and Rehabilitation includes two major programs--juvenile services and adult services. Within each of the two programs is an institutional division and a community division. Therefore, the four major areas of the department are the Field Services Division (adult parole and probation across the state), Prisons Division (State Penitentiary, Missouri River Correctional Center, and James River Correctional Center), Juvenile Community Services, and the Youth Correctional Center.

Correctional Facilities

The State Penitentiary in east Bismarck is the main prison complex, consisting of 550 prison beds, and houses maximum security inmates as well as some medium security inmates. The James River Correctional Center in Jamestown, which has 385 prison beds, is designated to hold medium security male inmates and housed the majority of the female inmates until they were transferred to the Dakota Women's Correctional Rehabilitation Center in New England during the 2003-05 biennium. The Missouri River Correctional Center in southwest Bismarck, which has 150 prison beds, houses minimum security male inmates and also housed some female inmates until they were transferred to the New England facility. Other inmates may be held in local correctional centers, in the community placement program, and in other states' facilities through the interstate compact program.

The Tompkins Rehabilitation and Correction Center, a combined program located on the campus of the State Hospital in Jamestown, is managed through the department's Field Services Division and houses both inmates and noninmates. The Tompkins Rehabilitation and Correction Center is the combination of the Tompkins Rehabilitation and Corrections Unit from the Stutsman County Corrections Center and the Corrections Rehabilitation and Recovery Center (DUI Center). The Tompkins Rehabilitation and Corrections Center consists of three 30-bed wards--one ward (30 beds) for females and two wards (60 beds) for males.

The Division of Juvenile Services is responsible for the Youth Correctional Center. The center, located west of Mandan, is the state's secure juvenile correctional institution. The center serves as a detention and rehabilitation facility for adjudicated juveniles who require the most restrictive placement and maximum staff supervision and provides appropriate programming to address delinquent behavior. Juvenile programming at the center includes drug and alcohol programming; child psychiatric and psychological services; a pretreatment 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 center provides adjudicated adolescents an opportunity to complete or progress toward completing their education coursework while in residence.

Community Services

The Community Services Division of the Division of Juvenile Services has nine satellite offices serving the eight human service 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.

The Field Services Division has offices across the state staffed by parole and probation officers and manages nearly four times more felons in the community than are in the state's prison facilities. As of June 1, 2004, the Field Services Division population supervised was 4,175.

2003-05 Biennium Appropriation

The 2003-05 biennium appropriation for the Department of Corrections and Rehabilitation is $114.3 million, of which $81.7 million is from the general fund. The $114.3 million total includes $93.1 million, of which $68.5 million is from the general fund, for adult services and $21.2 million, of which $13.2 million is from the general fund, for juvenile services. The 2003 Legislative Assembly included $6.7 million from the general fund in House Bill No. 1506 for contracting to house state female inmates at county facilities for the 2003-05 biennium, and $1 million was appropriated in the Prisons Division of the department for unspecified purposes which the department could use for costs of contracting to house female inmates. A total of 644.18 full-time equivalent (FTE) positions were authorized for the 2003-05 biennium, an increase of 29 FTE positions from the 2001-03 authorized level.

Female Inmate Housing Contract Status

Background

The 2003 Legislative Assembly anticipated one of the county facilities that could house the female inmates was the former St. Mary's School in New England. The 2003-05 biennium legislative estimate for female inmate contract housing anticipated a daily rate of $67 per inmate, $79 for each inmate needing intensive treatment services, and an additional $5.15 per day per inmate for medical-related costs. The number of female inmates was projected to range from 104 to 136 during the biennium.

2003 Related Legislation

Two bills relating to the housing of state female inmates were passed by the 58th Legislative Assembly (2003):

House Bill No. 1506 provided that a Grade 1 correctional facility that has a contract with the Department of Corrections and Rehabilitation to confine female inmates who have been sentenced to the physical and legal custody of the department may confine the female inmate for more than one year in accordance with the terms of the contract. The bill also provided that a female inmate confined in a county jail under this section is entitled to the same rights to sentence reduction for good and meritorious conduct and to pardon and parole as an inmate confined to a facility of the department.

House Bill No. 1271 provided that if no qualified state facility is available, the director of the Department of Corrections and Rehabilitation is required to contract with a county for the housing of female inmates in a county jail. The bill requires that the county with which the department contracts must have available and must provide the female inmates access to educational and vocational programs, chemical dependency treatment programs, mental health programs, medical services, and adequate recreational facilities.

Female Inmate Housing Contract

House Bill No. 1506 also includes a section of legislative intent providing that the state contract with county facilities to house state female inmates during the 2003-05 biennium. The Dakota Women's Correctional Rehabilitation Center (former St. Mary's School) in New England was the only county facility that was willing to house all state female inmates for the 2003-05 biennium. After several weeks of negotiations, the Dakota Women's Correctional Rehabilitation Center and the Department of Corrections and Rehabilitation signed a contract for housing female inmates on September 2, 2003, effective through June 30, 2005. The contract provides that the department will pay a daily rate of $62.23 per inmate or $74.23 per inmate needing intensive treatment services. In addition a $15.50 per inmate daily amount for medical-related costs is deposited into a special account and used for inmate medical expenses and if medical costs exceed the amount available in the medical account, the Dakota Women's Correctional Rehabilitation Center is to pay the first $50,000 of additional expenses and the state is responsible for any additional amounts. Originally, it was projected that the increase in the daily contract rate for the female inmates over the amount anticipated by the 58th Legislative Assembly would result in an increase in female inmate contract costs of approximately $300,000 for the 2003-05 biennium.

Dakota Women's Correctional Rehabilitation Center Facilities

The prison facilities at the Dakota Women's Correctional Rehabilitation Center in New England consist of the administration building and Haven Hall. The administration building contains the medium security dormitory, the future maximum security dormitory, the cafeteria, two gymnasiums (one for minimum security inmates and one for higher security inmates), the infirmary, auditorium, library, visitation room, classrooms, and the industries room. Inmates gain access to the secure recreation yard through the administration building. Haven Hall is the minimum security dormitory and contains the chapel.

Female Inmate Transfer Delays

The 58th Legislative Assembly anticipated the female inmates to be housed at a contract facility for the entire 2003-05 biennium beginning July 1, 2003. However, contract negotiations and remodeling delays resulted in delays in the transfer of the state female inmates from the James River Correctional Center in Jamestown to the Dakota Women's Correctional Rehabilitation Center in New England. The following is a chronology of events relating to the New England facility:

June 6, 2003	The Department of Corrections and Rehabilitation sent a request for proposals to county facilities regarding housing of state female inmates.
June 26, 2003	The Dakota Women's Correctional Rehabilitation Center reported at the Budget Committee on Government Services meeting that it anticipated to be ready to receive female inmates on August 1, 2003.
July 1, 2003	The 58th Legislative Assembly anticipated the state female inmate housing contract would begin.
July 7, 2003	The deadline for county facilities to respond to the request for proposals.
August 1, 2003	The date in the request for proposal that female inmates would be placed in a county facility.
September 2, 2003	The Department of Corrections and Rehabilitation and the Dakota Women's Correctional Rehabilitation Center signed the female inmate housing contract.
November 17, 2003	The first 14 minimum security state female inmates were transferred from the James River Correctional Center to the Dakota Women's Correctional Rehabilitation Center.
December 1, 2003	Within two weeks of the first inmate arrivals, the Dakota Women's Correctional Rehabilitation Center had received 68 minimum security female inmates.
January 1, 2004	The date the housing contract anticipated the Dakota Women's Correctional Rehabilitation Center would begin to house medium and close security state female inmates.
January 15, 2004	The Dakota Women's Correctional Rehabilitation Center reported to the Budget Committee on Government Services that it anticipated having the required remodeling projects completed to house the higher security inmates by April 2004–the delay in the elevator installation project was due to the retirement of the architect and the delay in the sprinkler system installation was due to a lack of water pressure and volume provided by the city of New England.
April 14, 2004	The Dakota Women's Correctional Rehabilitation Center reported to the Budget Committee on Government Services that it anticipated having the required remodeling projects completed to house the higher security inmates by June 2004.
June 16, 2004	The Risk Management Division agreed that higher security female inmates could be housed at the Dakota Women's Correctional Rehabilitation Center prior to the completion of the elevator provided that elevator construction has commenced, with the elevator shaft installed.
June 17, 2004	The Dakota Women's Correctional Rehabilitation Center reported to the Budget Committee on Government Services that it anticipated to be ready to house higher security female inmates in July 2004--the sprinkler system installation was completed, the elevator car ordered, and elevator shaft was being constructed.
August 11-12, 2004	The remaining 31 higher security female inmates were transferred from the James River Correctional Center to the Dakota Women's Correctional Rehabilitation Center.
July 1, 2005	The expected date for the Dakota Women's Correctional Rehabilitation Center to begin housing maximum security female inmates.

Facility Population

The Dakota Women's Correctional Rehabilitation Center reached its highest inmate population on August 18, 2004, with a total of 103 female inmates. As of October 6, 2004, there were 90 female inmates at the Dakota Women's Correctional Rehabilitation Center--52 minimum security inmates, 22 higher security inmates, and 16 inmates on orientation status--and none at the James River Correctional Center. The Dakota Women's Correctional Rehabilitation Center has a capacity of 110 inmates--70 minimum security and 40 medium security and orientation. A dormitory at the center will be remodeled into five individual cells to be used as a maximum security unit for the housing of short-term and long-term disciplinary problem inmates. As of October 2004 there is one disciplinary cell available at the center.

Facility Renovations

Remodeling projects necessary at the Dakota Women's Correctional Rehabilitation Center before it could house minimum security inmates included:

- Installation of a video camera security system.
- Installation of inmate telephones.
- Upgrading of the heating system.

Several remodeling projects had to be completed before the Dakota Women's Correctional Rehabilitation Center could house the higher security state female inmates, which resulted in the delay in housing the higher security female inmates as discussed earlier. Those remodeling projects included:

- Adding 1,000 feet of razor wire to the recreation yard security fence.
- Placing security bars over the dormitory windows.
- Installing a sprinkler system.
- Installing an emergency generator.
- Installing an elevator.
- Expanding the infirmary to meet the requirements of the Health Insurance Portability and Accountability Act.
- Reinforcing the security fence with concrete barrier under the fence line.
- Upgrading security, including installing security doors and a "Sallyport."

The committee learned the total estimated cost of facility renovations to house the minimum security and higher security female inmates, including the sprinkler system and elevator installations, was approximately $485,000. Also, to create a maximum security area a dormitory in the lower level of the Dakota Women's Correctional Rehabilitation Center administrative building needs to be renovated. The female inmate housing contract provides that the facility must be ready to house maximum security female inmates by July 1, 2005. The renovation of a dormitory into the maximum security area includes five individual cells, two day rooms, two showers, and access to the recreation yard. The estimated cost of the renovation is approximately $400,000.

Treatment Services and Prison Industries

Treatment services for the female inmates at the Dakota Women's Correctional Rehabilitation Center include day treatment and intensive outpatient levels of chemical dependency treatment, aftercare, anger management, victim's group, trauma and loss group, and cognitive restructuring.

Representatives of the Department of Corrections and Rehabilitation and the Dakota Women's Correctional Rehabilitation Center met to discuss treatment services for female inmates at the Tompkins Rehabilitation and Correction Center in Jamestown and the Dakota

Women's Correctional Rehabilitation Center in New England. The Tompkins Rehabilitation and Correction Center is a self-contained, 30-bed unit that provides daily intensive alcohol and drug addiction treatment and cognitive restructuring classes. After representatives of the Department of Corrections and Rehabilitation discussed the program and space requirements for the Tompkins Rehabilitation and Correction Center with representatives of the Dakota Women's Correctional Rehabilitation Center, it was agreed that if space is available at the Dakota Women's Correctional Rehabilitation Center, the services currently provided at the Tompkins Rehabilitation and Correction Center would be provided by the Dakota Women's Correctional Rehabilitation Center beginning July 2007.

The industries program--Prairie Industries--is operating at the center and its staff has been working with the Department of Corrections and Rehabilitation Roughrider Industries staff for training and contract development. As of October 2004 the Prairie Industries program employed 10 female inmates making t-shirts for the State Penitentiary and preparing to work on an order for 200 rainsuits for Dakota Outer Wear.

Medical Expenses

The committee learned the medical expenses for the Dakota Women's Correctional Rehabilitation Center from November 2003, when the center first began housing state female inmates, to October 2004 totaled $465,050, or $22.18 per inmate per day. It was reported this amount may decrease if St. Joseph's Hospital in Dickinson reduces its billing rates to the Medicaid rates. The center is negotiating the billings with the hospital to receive the applicable Medicaid rate. A large portion of the center's medical expenses are for dental costs resulting from the dental work for the female inmates with teeth problems resulting from the use of methamphetamine. Another large medical expense for the center when it first opened was the pharmacy bill for psychotropic drugs. However, the center's costs for psychotropic drugs has been decreasing as more of the inmates are adjusting to prison life at the Dakota Women's Correctional Rehabilitation Center. On October 6, 2004, the Department of Corrections and Rehabilitation reported to the Budget Committee on Government Services that it anticipates total medical expenses for the entire 2003-05 biennium to be in excess of the $15.50 daily medical rate by approximately $355,000, of which the Dakota Women's Correctional Rehabilitation Center would be responsible for $50,000, and the Department of Corrections and Rehabilitation would be responsible for approximately $305,000.

2005-07 Biennium Contract Information

The committee learned the Dakota Women's Correctional Rehabilitation Center is requesting a 2005-07 biennium budget, excluding medical expenses, of approximately $4.57 million for housing female inmates. This is based on a daily cost of $69.57 per inmate and an inmate population of 90 inmates. The $69.57 daily inmate cost is an increase of 11.8 percent from the current rate of $62.23. The center's 2005-07 biennium budget, excluding medical expenses, is:

Operating Expenses (Excludes Medical Expenses)	Total	Costs Per Day*
Payroll	$2,999,989	$45.66
Administration	101,995	1.55
Facility operations	193,920	2.96
Inmate operations	431,529	6.57
Security systems	108,240	1.65
Food services	405,900	6.18
Debt service	328,470	5.00
Total	$4,570,043	$69.57

*Costs per day calculated using 90 inmates and 730 days.

The Department of Corrections and Rehabilitation estimated a 10 percent increase in the daily rate for female inmates housed at the Dakota Women's Correctional Rehabilitation Center in its 2005-07 biennium budget request. The 10 percent increase provides a daily rate of $68.45 for female inmates not requiring intensive treatment and $81.65 per day for female inmates that do require intensive treatment, plus an additional $17.05 per day for medical costs.

Contract Rate Comparison

The following table provides information summarizing the female inmate contract rates and the estimated 2005-07 biennium female inmate contract rates:

Contract Rates for Female Inmates				
	2003-05 Biennium Legislative Estimated Daily Rates	2003-05 Biennium Actual Daily Reimbursement Contract Rates	2005-07 Biennium Estimated Daily Reimbursement Rates - Department of Corrections and Rehabilitation[2]	2005-07 Biennium Estimated Daily Reimbursement Rates - Dakota Women's Correctional Rehabilitation Center
Daily inmate housing rate (without intensive treatment)	$67.00	$62.23	$68.45[2]	$69.57
Daily inmate housing rate (with intensive treatment)	$79.00	$74.23	$81.65[2]	N/A
Daily medical rate per inmate	$5.15	$15.50[1]	$17.05[2]	N/A[3]

[1]This actual rate has been $22.18 and may decrease if the Dakota Women's Correctional Rehabilitation Center is able to receive reduced rates at the Medicaid level from St. Joseph's Hospital in Dickinson.

[2]The Department of Corrections and Rehabilitation estimated a 10 percent increase in daily costs in its 2005-07 biennium budget request.

[3]The Dakota Women's Correctional Rehabilitation Center did not provide an estimated daily medical rate for the 2005-07 biennium because it is still negotiating medical billing rates with St. Joseph's Hospital in Dickinson.

Dakota Women's Correctional Rehabilitation Center Tour

The committee held a meeting and conducted a tour of the Dakota Women's Correctional Rehabilitation Center on April 14, 2004. At the time of the tour, the center only housed minimum security inmates and the dormitories for the medium security inmates were being renovated. The committee toured the facility's two gymnasiums, the dormitories for minimum security inmates (Haven Hall) and medium/high security inmates, the chapel, the cafeteria, the outdoor recreation area, the infirmary, and the industries room. The facility allowed the minimum security inmates considerable movement and was preparing for a more secure environment to house the medium security inmates. In preparation to receive the higher security inmates, additional security measures were planned, including security doors, a "Sallyport," and securing the recreation yard fence.

Inmate Populations

The committee received inmate population information at each meeting, as shown below:

	Male Inmate Population			Female Inmate Population			Total Inmate Population		
Month	Legislative Estimate	Actual	Difference	Legislative Estimate	Actual	Difference	Legislative Estimate	Actual	Difference
July 2003	1,013	1,087	74	104	106	2	1,117	1,193	76
August 2003	1,017	1,082	65	105	109	4	1,122	1,191	69
September 2003	1,020	1,095	75	106	107	1	1,126	1,202	76
October 2003	1,023	1,129	106	107	111	4	1,130	1,240	110
November 2003	1,027	1,138	111	109	110	1	1,136	1,248	112
December 2003	1,030	1,143	113	111	110	(1)	1,141	1,253	112
January 2004	1,034	1,148	114	112	114	2	1,146	1,262	116
February 2004	1,037	1,160	123	113	115	2	1,150	1,275	125
March 2004	1,040	1,168	128	114	118	4	1,154	1,286	132
April 2004	1,044	1,173	129	116	121	5	1,160	1,294	134
May 2004	1,047	1,173	126	117	125	8	1,164	1,298	134
June 2004	1,051	1,166	115	119	126	7	1,170	1,292	122
July 2004	1,054	1,171	117	120	127	7	1,174	1,298	124
August 2004	1,058	1,178	120	122	127	5	1,180	1,305	125
September 2004	1,061	1,167	106	123	129	6	1,184	1,296	112

Inmate Admissions and Sentence Lengths

The Department of Corrections and Rehabilitation provided the committee with information regarding inmate admissions and inmate sentence lengths. The committee learned that from January 1, through September 1, 2004, the Department of Corrections and Rehabilitation had 645 new inmate arrivals, compared to 998 new arrivals for calendar year 2003 and 823 new arrivals for calendar year 2002. Of the 645 new inmate arrivals for 2004, 423 inmates (66 percent) have sentence lengths of one year to less than five years and 153 inmates (24 percent) have sentence lengths of five years to less than 10 years. The majority of new inmate admissions are for drug and alcohol-related offenses, consisting of 299 admissions (46 percent) and property, status, and other offenses consisting of 198 admissions (31 percent).

Inmate Recidivism Rates

The Department of Corrections and Rehabilitation provided the committee with information on inmate recidivism rates. A recidivist is defined as an inmate who is released from incarceration on probation, parole, or expiration of sentence and is returned to Department of Corrections and Rehabilitation Prisons Division custody within three years of release because of a new offense. The recidivism rates for the years 1996 through 2000 were 18.7 percent for 1996, 21.3 percent for 1997, 17.5 percent for 1998, 22.6 percent for 1999, and 24.6 percent for 2000. The department reported one reason for the recidivism rates in North Dakota increasing is that the state has had an increase in inmates, while the number of counselors has remained the same.

Inmate Drug and Alcohol Treatment

The Department of Corrections and Rehabilitation provided the committee with the following information on drug and alcohol treatment for inmates:

Month	Number of Inmates Released From Custody	Number of Inmates Referred to Drug or Alcohol Treatment	Number of Inmates Who Completed Recommended Drug and Alcohol Treatment	Number of Inmates Who Did Not Complete Drug and Alcohol Treatment	Percentage of Released Inmates Referred to Drug and Alcohol Program but Failed to Get Treatment	Number of Inmates Who Failed to Complete Drug or Alcohol Program Due to "Inmate Behavior"	Number of Inmates Who Failed to Complete Drug or Alcohol Program Due to "Could Not Get Into a Program"
September 2003	50	31	23	8	26%	5	3
October 2003	62	41	30	11	27%	5	6
November 2003	72	47	34	13	28%	5	8
December 2003	77	39	33	6	15%	5	1

Survey of State Agency Programs

The committee received a Legislative Council memorandum entitled *Survey of Agency Alcohol, Drug, Tobacco, and Risk-Associated Behavior Programs - Update*. State agencies were surveyed and asked to provide updated information for the 2001-03 and 2003-05 bienniums on related programs and funding. The total 2003-05 biennium funding for risk-associated behavior programs is $72 million, of which $16 million is from the general fund and $56 million is from federal and special funds. The report indicates the sources of federal and special funds, program funding restrictions, the time period the funding is available, and the anticipated uses of funds.

2005-07 Biennium Facility Needs

The committee received information from the Department of Corrections and Rehabilitation regarding the department's facility needs for the 2005-07 biennium.

Missouri River Correctional Center

The committee learned that construction of a new kitchen and dining hall at the Missouri River Correctional Center continues to be a priority for the Department of Corrections and Rehabilitation because the current building was constructed over 60 years ago and lacks sprinklers as a fire suppression system, which is a safety risk and a potential liability issue for the state. The new building would replace the current kitchen and is estimated to cost approximately $2.2 million, plus an additional demolition cost of approximately $15,000. The department anticipates constructing the new kitchen and dining hall so it could also be used as an indoor recreation facility for the inmates.

James River Correctional Center

The Department of Corrections and Rehabilitation is proposing to convert "kitchenettes" at the James River Correctional Center into five-person dormitories on floors 2 through 5. The "kitchenettes" are no longer needed since the inmates are fed in the food service building that was formerly part of the State Hospital. The remodeling costs are estimated to be approximately $400,000 for the 20 additional beds, and the department projects it will likely pay for itself within 12 months with the money the department will save by not having to contract for 20 male prisoners.

State Penitentiary - East Cellhouse

The committee toured the State Penitentiary, including the east cellhouse. The committee learned the east cellhouse was constructed around 1912, was originally constructed to house 160 inmates, and currently has 159 cells after one cell was converted into a janitor's closet. The cells are approximately 52 square feet, with 22 square feet of unencumbered space, which is considered to be a small cell by today's prison standards and the size does not meet the minimum requirements to pass the standards of the American Correctional Association, which, for new prison cells, requires a minimum of 80 square feet with 35 square feet of unencumbered space. Concerns identified with the east cellhouse include old plumbing with water leaking in the chaseway, building and fire code violations, a lack of energy efficiency, a lack of air-conditioning, and the large number of staff required for each shift because of "blind" spots caused by the design of the building.

The committee encouraged the Department of Corrections and Rehabilitation to request funds from the preliminary planning revolving fund to determine the cost and specifications relating to the replacement of the east cellhouse at the State Penitentiary. After Budget Section approval, the Department of Corrections and Rehabilitation received $60,000 from the preliminary planning revolving fund and hired Ritterbush and Associates of Bismarck and HDR Architecture, Inc., Chicago, Illinois, to conduct a study of the replacement of the east cellhouse.

The architect's study of the State Penitentiary includes the following findings:

East cellhouse

- Nearly 100 years old and has structural and maintenance issues.
- Fails to meet current life safety standards.
- Fails to meet American Correctional Association standards for space, light, and programs.
- Fails to meet Americans with Disabilities Act standards for accessibility.

Medical facilities

- Lacks space, total beds available, and storage.
- Lacks privacy, especially in waiting and examination areas.
- No disabled access (stretcher used to carry inmates up stairs).
- No space for long-term hospice care.
- Pharmacy lacks workspace and security.
- Dental and x-ray are poorly located for security.
- Lacks facilities requiring hospital stays in Bismarck.

Segregation

- Lacks beds, which increases opportunities for assaults on staff and other inmates.
- Difficult to manage the population.
- No program or ancillary space.

Orientation

- Lacks sufficient beds for average number of new arrivals each month.
- Unable to separate inmate groups properly.
- Lacks processing space and has inefficient workflow.
- Building could be utilized for general population housing.

Facility

- Too much of a burden on central control and front lobby traffic.
- Path to visitation is lengthy.
- Laundry is poorly located.
- Medical treatment area is poorly located since it is on the upper floor.

- Yard access for vehicles and the south tower location needs to be improved for better security.

The study also found the current situation results in expensive outsourcing of prison beds, difficulty in managing inmates, and potential exposure to lawsuits.

The architect's recommendation for changes at the State Penitentiary include:

1. Relocating the warehouse.
2. Constructing new vehicle access and a new south tower.
3. Demolishing existing south tower.
4. Constructing new orientation housing, an inmate intake/transfer unit, clinic, infirmary, segregation unit, visitor's entrance, and laundry facility.
5. Eliminating the east cellhouse.

The architect believes the changes would result in 265 new prison beds with a net prison bed gain of 123 permanent beds at the State Penitentiary and would require an additional 38.4 full-time equivalent employees. The total cost of the new construction is estimated to be $16.3 million, with a total project cost, including demolition costs, contingency, fees, furnishings, and equipment of $29.2 million. The estimated cost per cell based on the buildings' construction costs is approximately $71,000, and the estimated cost per cell based on the total project cost, excluding demolition costs, is approximately $95,000. The total project cost will increase by approximately $2.1 million if the project is delayed from 2006 until 2008.

The committee learned the majority of the Department of Corrections and Rehabilitation budget for the past three bienniums has been used to meet the needs of the rising inmate population, resulting in the shortage of funds for physical plant maintenance. The department is behind schedule on many normal repairs and a preliminary list of projects the department needs to address in the 2005-07 biennium totals approximately $2.5 million, but some of the projects included in the preliminary list relate to the east cellhouse at the State Penitentiary and, therefore, could be removed from the list if the east cellhouse is replaced.

Land Owned by the Department of Corrections and Rehabilitation

The committee learned the Department of Corrections and Rehabilitation owns significant acreage in the Bismarck-Mandan area:

- The Missouri River Correctional Center in Bismarck is located on approximately 100 acres, and the department owns an additional 919 acres of land at the site, consisting of hay land and riverfront woodlands. The department's estimate of the value of this land, obtained through consultation with a realtor, is between $3,000 and $4,000 per acre.
- The department owns approximately 170 acres at the State Penitentiary site in Bismarck. The Game and Fish Department utilizes approximately 35 to 40 acres on the east side of the State Penitentiary for wildlife habitat. The State Department of Health, Game and Fish Department, and State Water Commission have buildings located on approximately 20 acres of property on the west side of the State Penitentiary. The remainder of the land is utilized by the State Penitentiary.
- The department owns 279 acres a few miles east of Bismarck, which is farmland leased to area farmers and one acre for a gun range. Hay land in the area is valued at $314 per acre and pastureland is valued at $199 per acre.
- The department owns 1,179 acres at the Sunny Farm located west of Mandan adjacent to the Youth Correctional Center, which is leased to area landowners and is managed by the North Dakota State University Experiment Station. Hay land in the area is valued at $288 per acre and pastureland is valued at $193 per acre. Agricultural land in the area has been sold in the range of $230 to $254 per acre. The department leases approximately 11 acres at the Youth Correctional Center site to the Strata Corporation for material storage. The lease is $2,000 per biennium.

During the committee's tour of the Missouri River Correctional Center, the committee learned about a proposed riverbank stabilization project along the department's 8,000 to 9,000 linear feet of riverfront property along the Missouri River located at the Missouri River Correctional Center. The Burleigh, Oliver, Morton, McLean, and Mercer (BOMMM) County Joint Board proposes a demonstration and study project with the United States Army Corps of Engineers for bank stabilization and aquatic restoration on the Missouri River. The intent of the project, called North Dakota's Missouri River Bank Stabilization and Aquatic Restoration Demonstration/Study Project, is to try various bank stabilization and aquatic restoration techniques and to monitor the effects of the installation on the Missouri River corridor environment. Some of the focus areas to be monitored include water quality, fishery food web, riverbank and bed stability, impact to islands and sandbars, above-bank wildlife habitat, backwater areas, threatened and endangered species habitat, and the Oahe Reservoir Delta. The total estimated cost for the proposed riverbank stabilization project is $4.13 million, of which 75 percent of the funding will come from federal sources and 25 percent of the funding will be local costs, such as cash and in-kind services, donated land rights, donated labor for maintenance, and other items. The BOMMM County Joint Board will need to obtain easements from the state for the 57.5 acres of land that will be impacted by the project.

The committee toured the approximate 9,000 feet of riverbank along the Missouri River and observed the erosion and the related loss of acreage the state has experienced since 1976.

Criminal Justice Process

Testimony

The committee received information from the Attorney General's office and the judicial branch regarding the criminal justice process. The Attorney General informed the committee that treatment is essential to the state's fight against drug abuse because without treatment, offenders will return to using drugs after their release from incarceration. The Attorney General has worked with the North Dakota Commission on Drug and Alcohol Abuse, which emphasizes three key issues in dealing with the drug problem in the state--prevention, treatment, and law enforcement. The commission has 37 recommendations and has created five subcommittees to facilitate the work of the commission. The five subcommittees are to work on issues relating to prevention, tribal government, treatment, tobacco, and law enforcement. The judicial branch suggested that the 59th Legislative Assembly (2005) review the mandatory sentencing laws because the judicial branch is generally not in favor of either mandatory sentences or sentencing guidelines.

Sentencing Commissions

The committee received information regarding sentencing commissions. The committee learned there are 22 states in the United States and the District of Columbia that have established sentencing commissions, which generally include legislators, judicial branch members, Attorney General's office members, state's attorneys, corrections and law enforcement officials, public defenders, and the general public. Overcrowding in prisons and jails, eliminating unwarranted sentencing disparity, establishing a wider array of sentencing options, and promoting the rehabilitation of offenders are all justifications for a sentencing review process. The sentencing commission's goals must focus on long-term solutions after careful deliberation of consequences because the biggest challenge for sentencing commissions is to develop the capability to more accurately predict the impact of new laws on agencies such as the Department of Corrections and Rehabilitation.

Task Force on Violent and Sexual Offenders

The committee received information regarding the Governor's Task Force on Violent and Sexual Offenders. The committee learned the Governor formed the task force in January 2004 to examine the laws and practices with regard to violent and sexual offenders. The Governor chaired the task force, which consisted of representatives from the judicial branch, legislative branch, state's attorneys, law enforcement, Department of Corrections and Rehabilitation, State Hospital, victims' rights groups, and the general public. The goal of the task force is to close a "gap" related to higher risk sexual offenders who have completed their criminal sentences and are not referred for civil commitment. These offenders are subject to sexual offender registration but are not necessarily under any formal supervision. The recommendations from the task force include:

- Gross sexual imposition - Increase the maximum sentence from 20 years to life imprisonment for offenses that involve serious bodily injury or in which the victim is compelled by force or threat or is less than 15 years old. Sentences for all other cases of gross sexual imposition should be increased from 10 to 20 years. For cases in which the victim dies as a result of the offense, there should be a mandatory sentence of life imprisonment without parole.
- Supervision after incarceration - Mandatory period of five years' supervision should be added to any prison sentence given to a sexual offender and the judge should be given the discretion to add another five years. The Department of Corrections and Rehabilitation should increase its utilization of electronic monitoring for sexual offenders and issue sexual offender-specific presentence investigations in every sexual offender case.
- Civil commitment - All sexual offenders who score eight or higher on the *Minnesota Sex Offender Screening Tool - Revised* assessment should be referred for civil commitment instead of the current score of 13 or higher. After an individual is committed, the executive director of the Department of Human Services should conduct a risk assessment to determine if treatment may be safely provided on an outpatient basis.

The committee learned agencies that are directly impacted by the task force recommendations include the Department of Corrections and Rehabilitation and the Department of Human Services and the necessary funding to carry out the task force recommendations will be added to the agency budget requests. The task force recommendations will be contained in a package of bills from the task force which will be introduced to the 59th Legislative Assembly. Some of the issues to be addressed in the bills include increasing the length of sentences and probation, to allow for community commitment, and to allow the use of global positioning system tracking and other supervisory techniques.

Effectiveness of Alternatives to Incarceration

The committee received information from the judicial branch and the Department of Corrections and Rehabilitation regarding alternatives to incarceration. The committee learned that problem-solving courts, including drug courts, mental health courts, and reentry courts, are alternatives to incarceration. Three juvenile drug courts, located in Grand Forks, Fargo, and Bismarck, and two adult drug courts, located in Bismarck and Fargo, have been developed. The mission of the drug courts is to reduce recidivism among nonviolent offenders with substance abuse problems and to improve treatment success. The numerous evaluations of drug courts have generally reported positive results, including retaining individuals in treatment, reducing new charges and new

convictions, and cost-savings for the criminal justice system.

The Department of Corrections and Rehabilitation reviewed the alternatives to incarceration, including:

- Tompkins Rehabilitation and Correction Center - This is an inpatient treatment program that is located in Jamestown and managed jointly by the Department of Corrections and Rehabilitation and the State Hospital. It consists of three 30-bed wards--two for males and one for females. Treatment is followed by halfway house placement or direct community supervision.
- Last Chance program - This program is available in Cass County and consists of probation violators who would require confinement if not for the program, and the average daily population is 20 probation violators.
- Reentry initiative - This is a federally funded initiative designed for the high-risk inmates who would "max" their sentences without supervision after incarceration. Reentry assists in making an inmate more attractive for parole through the development of a supervision plan that reduces an inmate's likelihood of re-offending. This was piloted in Fargo and is planned to be implemented in Bismarck and Williston. As of June 2004, 13 offenders were participating in the Fargo program.
- Drug courts - The courts manage chronic alcoholics and drug offenders while they are on supervised probation. As of June 2004 the Bismarck adult drug court had 23 offenders participating and the Fargo adult drug court had 13 offenders participating. The department anticipates the initiation of a drug court program in northwestern North Dakota within the next few years.

North Central Correctional and Rehabilitation Center

The committee learned about a proposed North Central Correctional and Rehabilitation Center to be located in Rugby which will provide both substance abuse treatment and incarceration. The proposed North Central Correctional and Rehabilitation Center will be a 100-bed facility located in the Rugby Industrial Park. The center plans to have 60 beds for incarceration of minimum and medium security inmates and 40 beds for long-term rehabilitation. The facility, which is estimated to cost between $6 million and $6.5 million, will be jointly owned by the city of Rugby and Pierce County, and representatives of the proposed facility are seeking private and federal funds for the facility. The facility is intended to house federal and state prisoners and other county prisoners. The center anticipates a break-even rate for the facility of $50 per person per day for incarceration and $75 per person per day with treatment.

Recommendation

The committee recommends the Department of Corrections and Rehabilitation obtain two land appraisals for the land the department owns at the Missouri River Correctional Center. The appraisals are to include the valuation of the land with the riverbank stabilization project and without the project and be available for consideration by the 59th Legislative Assembly. The Department of Corrections and Rehabilitation is to pay for the appraisals from its 2003-05 biennium appropriation, which may affect the department's deficiency appropriation request, if necessary.

The committee makes no recommendation regarding the continuation of the contract for housing female inmates at the Dakota Women's Correctional Rehabilitation Center.

NEEDS OF INDIVIDUALS WITH MENTAL ILLNESS, DRUG AND ALCOHOL ADDICTIONS, AND PHYSICAL OR DEVELOPMENTAL DISABILITIES

Pursuant to 2003 House Concurrent Resolution No. 3037, the committee studied the needs of individuals with mental illness, drug and alcohol addictions, and physical or developmental disabilities, including individuals with multiple needs and how the state responds to those needs. As part of this study, the committee received testimony from representatives of the Department of Human Services, the State Hospital, Developmental Center, and the Mental Health Association in North Dakota regarding developmental disabilities services, mental health and substance abuse treatment, services provided to individuals with multiple needs, the long-term plans for the State Hospital, Developmental Center, and state and county correctional facilities, and the impact and availability of community services.

Department of Human Services Testimony

Developmental Disabilities Services

The committee learned that eligibility for developmental disabilities services is determined by developmental disabilities case management at the human service centers pursuant to North Dakota Administrative Code Chapter 75-04-06. Developmental disabilities case managers are also responsible for:

- Initial and annual assessments of each individual's level of care determination.
- Development and periodic update of individual case plans.
- Informing individuals of feasible alternatives.
- Ongoing monitoring of the appropriateness of services included in an individual's case plan.
- Assisting individuals in gaining access to other Medicaid services as well as medical, social, educational, and other services.
- Providing direct support to individuals for whom the department is not purchasing services.

North Dakota ranked fourth in 2000 among states in spending on community developmental disabilities services per $1,000 of state personal income, and North Dakota led the nation in total fiscal effort, spending $7.16 per $1,000 of personal income on developmental

disabilities services compared to a national average of $3.67 per $1,000. In 2001 North Dakota ranked first in overall placement rate, with 314 persons receiving developmental disabilities residential services per 100,000 of state population, while the national average was 115 persons per 100,000 population.

Mental Health and Substance Abuse Treatment and Individuals With Multiple Needs

The committee received information from the Department of Human Services regarding the community-based system of care for persons with mental illness and/or substance abuse disorders. The committee learned that the eight human service centers serve as the regional hubs for an efficient array of services for numerous disorders and disabilities, which allows individuals with multiple disorders to access a centralized location for assessment, treatment planning, and case management. More specialized services are provided through contracts negotiated by each human service center with private providers in the respective regions. The areas of services provided include regional intervention services, extended care, clinical services, alcohol and drug abuse, and children's mental health. In fiscal year 2002, 14,600 persons received one or more community-based mental health services and 5,685 persons received one or more community-based substance abuse services.

The committee received information from the Department of Human Services regarding the number of clients receiving mental health and/or substance abuse services in the regional human service centers. The committee was informed that the human service centers converted to a new software system and data is missing from two of the centers, but considering this limitation, on November 12, 2003, 1,493 clients with mental illnesses and/or substance abuse disorders received 1,980 mental health and/or substance abuse services. These services include a variety of services--case management, individual or group therapy, medication management, crisis stabilization, detoxification, residential care, and others and some clients, due to the severity of their disorders, receive more than one service on any given day.

The committee received information from the Department of Human Services regarding the services provided to individuals with multiple needs. The committee learned that eight regional human service centers have comprehensive services and the ability to have developmental disabilities, mental health, substance abuse, and vocational rehabilitation services located in a single provider entity. For children and adolescents with extremely complex needs, a state review team consisting of representatives from Mental Health and Substance Abuse, Children and Family Services, Disability Services, Medical Services, Juvenile Services, Department of Public Instruction, the State Hospital, and the Developmental Center meet regularly to review particularly challenging situations and to develop methods and approaches for serving each individual with the blend of services required to help the young person achieve stability and improvement.

Methamphetamine Impact

The committee received information regarding the effects that increased methamphetamine use has had on Department of Human Services programs, including the foster care and child welfare programs. The committee learned the Children and Family Services Division of the Department of Human Services conducted a survey of the county social services offices on August 22, 2003. The survey included questions that assessed the role methamphetamine use, manufacture, or selling has on the placement of children in foster care as well as other consequences within the child welfare system. There were 865 children in care through either county social services or the Juvenile Services Division at the time of the survey, and the response rate to the survey was 88 percent, or 758 responses. The survey indicated 117 children, or 15 percent of the responses, were in foster care because of methamphetamine use, manufacturing, or selling and of those 117 children, 58 would not likely have been removed from the home were methamphetamine not a factor. The counties have lost social workers due to the fear associated with being involved in the removal of children from their homes where drugs have been manufactured. As a result of this concern, the department's regional staff has received training from law enforcement describing the methods used in the criminal investigation of methamphetamine-manufacturing cases and the Department of Human Services will work with the Attorney General's office to develop a protocol for interventions in methamphetamine-related child welfare situations.

The Department of Human Services found that methamphetamine use has had a significant impact on the child welfare system, not only in the number of children placed in foster care, but also in the number of reports of child abuse and neglect and the complexity of the issues surrounding the children who are being served. The committee learned that another effect of methamphetamine on the child welfare system is the time demands social workers face when providing case management services to a family involved with methamphetamine, which are significantly higher than other child welfare situations. The department is concerned whether North Dakota has sufficient staff to deliver child welfare services. As a result, technical assistance from the National Child Welfare Resource Center for Family-Centered Practice is conducting a workload analysis to determine how much time is necessary for a worker to perform family-centered child welfare case management services as well as a realistic caseload size. The results of the analysis will be available in December 2004 for consideration during the 2005 legislative session.

The committee learned that the detoxification period for methamphetamine addiction is generally much longer than for other drugs or alcohol and also requires longer treatment. As a result, the Department of Human Services treatment service system is experiencing a shortage of residential beds to accommodate the longer detoxification period and the longer, more intense residential treatment. The key issue with treatment for methamphetamine addiction, or any other substance abuse

disorder, is sufficient access to the appropriate level of care at the right time for the appropriate length of time.

North Dakota State Hospital Testimony

The committee received information regarding the State Hospital. As of September 2003 the State Hospital had 107 patients, with 94 patients in the inpatient psychiatric and substance abuse programs and 13 patients in the transitional living outpatient program. The State Hospital serves an additional 76 substance abuse patients under contract with the Department of Corrections and Rehabilitation. The State Hospital budget was based on 135 hospital patients and an additional 90 patients under contract with the Department of Corrections and Rehabilitation. The State Hospital admits about 700 patients per year.

The State Hospital provides the following services--care and treatment for adults with serious mental illness, care and treatment for adults with substance abuse problems, and short-term services for children and adolescents with serious emotional disorders and substance abuse problems. The State Hospital shares the campus and services with the James River Correctional Center, and the services provided to the Department of Corrections and Rehabilitation include substance abuse services, the DUI offender program, and the revocation program.

The average daily population at the State Hospital has decreased from 220 in 1997 to 113 in 2003, as the result of more individuals being treated in community settings. However, the State Hospital has experienced a growth in services to patients from the correctional system, and the State Hospital has transferred several vacant or near vacant buildings to the James River Correctional Center in the last five years. The State Hospital has been seeing a trend of new referrals, including inmates, nursing home patients, and a small subset of the chronically and severely mentally ill population. The patient population at the State Hospital has stabilized at the 115- to 135-patient range, and the hospital does not anticipate significant population growth or decline.

The State Hospital is spending $2.8 million for a significant energy update for the entire campus, which will produce energy savings that will offset the cost of the program. Aside from the energy program, no other major capital improvements are anticipated during the 2003-05 biennium.

The committee learned the State Hospital is not able to assimilate clients from the Developmental Center to the hospital campus because of the hospital's population, the needs of the correctional substance abuse programs, and the potential demands from the community. The State Hospital continues its efforts to collaborate and cooperate with the Developmental Center and the Department of Corrections and Rehabilitation.

The committee learned the State Hospital works closely with the Department of Corrections and Rehabilitation in regard to mentally ill inmates. The State Hospital evaluates criminal defendants and prepares competency and criminal responsibility evaluations for the district courts and admits and treats individuals from county jails who have a mental illness. The hospital provides a consultant psychiatrist for the seriously mentally ill in the North Dakota correctional system, who evaluates, makes treatment recommendations, and orders medications for inmates. In 2001 the hospital began providing residential substance abuse services for male and female inmates from the Department of Corrections and Rehabilitation. The State Hospital provided the following recommendations to the committee regarding mentally ill individuals and substance abusers:

- Primary emphasis should be placed on prevention efforts and the treatment of mentally ill and substance abusers in community-based services.
- A thorough review of mental health services and expenditures in the correctional system should be done to determine if they are adequate to meet the prisoners' needs.
- The State Hospital should continue to provide residential services to substance abusers from the correctional system, consulting services for the most seriously mentally ill from the correctional system, competency evaluations, treatment for the mentally ill from county jails, and evaluation and treatment of sexual offenders.

The committee learned the State Hospital opened a second sexual offender unit on June 1, 2004, consisting of 10 beds to deal with the growth in the sexual offender population. The capacity of the new unit is 25 beds, to allow the hospital to further expand, if needed. With the addition of the second unit, the hospital has two secure units totaling 32 beds, of which 28 beds are for evaluation and treatment of sexual offenders and 4 beds are reserved for competency evaluations; county jail transfers; and individuals who are mentally ill and dangerous. As of October 2004 the two units have an occupancy of 22 sexual offenders--17 civilly committed sexual offenders, 2 sexual offenders who have been recommended for civil commitment and are waiting for a court hearing, and 3 sexual offenders who are being evaluated. The hospital anticipates an additional four individuals to be referred for evaluation by the end of 2004. The original cost estimate for operating the second sexual offender unit was $1.1 million; however, the actual cost is anticipated to be less than $1.1 million due to referral delays, which resulted in the unit opening one month later than anticipated. The annual cost per patient in the sexual offender unit is $74,100 with an average of 27 patients in the two units, and the projected cost per patient for the 2005-07 biennium is $75,900.

North Dakota Developmental Center Testimony

The committee received information regarding the Developmental Center. The committee learned as of September 2003 the Developmental Center had 151 residents--148 developmentally disabled individuals and 3 traumatic/acquired brain injury individuals--and the

facility admits about 15 to 25 individuals per year. Services provided at the Developmental Center include residential and day services for individuals with psychiatric diagnoses and significant challenging behaviors; residential, day, and treatment services for males dealing with sexual offender behaviors; traumatic brain injury services; medical, residential, and day services for individuals who are totally dependent on staff and have medical concerns that require nursing staff accessibility 24 hours per day; and a dual sensory unit for individuals diagnosed with profound mental retardation and vision and hearing disabilities who also have severe medical conditions that require complicated care. The Developmental Center has identified 25 to 30 residents who could be served in the community if the following factors were in place--the availability of community services specific to their needs, the willingness of the clients to be relocated, the concurrence of guardians, and the fiscal resources to pay for the community-based care.

The committee learned the collaboration and cooperation of the Developmental Center and State Hospital since 2000 has produced several significant results, including the sharing of fiscal resources, combining 10 administrative/management positions, and collaboration and exchange of staff expertise. The committee learned it would be difficult to assimilate any State Hospital clients into the campus of the Developmental Center because of the large population of 151 individuals at the Developmental Center, the acuity level of the State Hospital patients, and the lack of usable space at the center. Each campus would need to decrease its population significantly before one site could serve both populations.

For fiscal year 2002 the Developmental Center cost per day ranged by living area from $245 per day to $373 per day and the medical cost per day averaged $53 per person per day. The Developmental Center is in the process of spending $1.9 million for a significant energy update for the entire campus, which will produce energy savings that will offset the cost of the program with an estimated payback period of 10 years. The committee learned that, aside from the energy program, no other major capital improvements are anticipated during the 2003-05 biennium.

Mental Health Association in North Dakota Testimony

The committee received information from the Mental Health Association in North Dakota regarding the association's activities related to the committee's study of the needs of individuals with mental illness, chemical addictions, and co-occurring disorders. The committee learned that the association is planning a survey to assess access to the State Hospital and human service centers for people with psychological problems, chemical addictions, and for those in need of supportive or residential housing. The survey was sent to over 2,700 professionals working in public and private sectors, and the survey's final report is due to be completed the third quarter of 2004 and will be distributed to the 59th Legislative Assembly.

The committee learned there is a critical need for early diagnosis and early and ongoing treatment for individuals with mental illness and chemical dependency, and there is also a need to enhance community-based services that will result in cost benefits to the state. The association indicated it has dedicated much effort toward prison diversion strategies for mentally ill and chemically dependent individuals in which building community services and improving the ability to access the services are critical for the success of the diversion programs.

The committee learned the challenges to mentally ill and chemically dependent individuals include homelessness, timely access to drug treatment, and affordable medications. The following items were identified by the association as necessary to treat chemical addictions and severe mental illness:

- Long-term residential treatment centers.
- Inpatient treatment.
- Outpatient drug and co-occurring disorders treatment.
- Housing.
- Case management.

The committee was informed about a new initiative, the Jail Intervention Coordinating Committee, that is a step beyond jail diversion and looks at the entire scope of services to attempt to link individuals with treatment and services before their mental health issues escalate to a level that requires court and law enforcement involvement. Membership of this committee consists of individuals from housing authorities, hospitals, human service centers, police, parole and probation, Blue Cross Blue Shield of North Dakota, and others. The Jail Intervention Coordinating Committee has developed presentence diversion alternatives that offer treatment plans instead of jail sentences for individuals who meet the eligibility criteria and that committee plans to discuss these alternatives with the Attorney General, the Chief Justice of the Supreme Court, and area judges.

Recommendation

The committee does not make any recommendation regarding the needs of individuals with mental illness, drug and alcohol addictions, and physical or developmental disabilities.

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 2003-04 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. The North Dakota Legislative Council appointed a commission to meet with the South Dakota commission. 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 2003-04 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 State Penitentiary, Missouri River Correctional Center, Youth Correctional Center, Roughrider Industries, State Hospital, James River Correctional Center, and Developmental Center. The committee heard about facility programs, institutional needs for major improvements, problems institutions or other facilities may be encountering during the interim, and information on land and building utilization. The tour group minutes are available in the Legislative Council office and will be submitted in report form to the Appropriations Committees during the 2005 legislative session.

BUDGET COMMITTEE ON HEALTH CARE

The Budget Committee on Health Care was assigned the following study responsibilities:

1. Section 14 of 2003 House Bill No. 1004 directed a study of the nursing home survey process, including a review of federal, state, and local agency procedures and requirements that result in additional costs, duplicated procedures, and added regulations for nursing homes, and the potential for mitigating the impact of new mandated federal rules through collaboration between the State Department of Health and the Department of Human Services and the submission of waiver requests.
2. Section 11 of 2003 House Bill No. 1430 directed a study of the value of medical assistance program use of benefit purchasing pools, preferred drug lists, and other pharmacy benefit management concepts, including the fiscal impact of the appeals and grievance process on existing programs.
3. Section 16 of 2003 Senate Bill No. 2012 directed a study of the feasibility and desirability of establishing an advisory council for the medical assistance (Medicaid) program of the Department of Human Services. The committee received approval from the chairman of the Legislative Council to expand the study to include a review of Medicaid payments, access to services, and utilization.
4. Recommend a private entity, after receiving a recommendation from the Insurance Commissioner, for the Legislative Council to contract with to provide a cost-benefit analysis for legislative measures mandating health insurance coverage of services or payment for specified providers of services, or an amendment that mandates such coverage or payment, pursuant to North Dakota Century Code (NDCC) Section 54-03-28.

The committee was also assigned the responsibility to receive reports from:

- The State Health Officer regarding the implementation of the community health grant program, pursuant to NDCC Section 23-38-02.
- The State Board of Nursing on its study of the nursing educational requirements in this state and the nursing shortage in this state and its implications for rural communities, pursuant to NDCC Section 43-12.1-08.2.
- The Department of Human Services describing enrollment statistics and costs associated with the children's health insurance program state plan, pursuant to NDCC Section 50-29-02.

Committee members were Senators Judy Lee (Chairman), Robert S. Erbele, Tom Fischer, Ralph L. Kilzer, Tim Mathern, and Russell T. Thane and Representatives David Drovdal, Joyce Kingsbury, Gary Kreidt, Ralph Metcalf, Carol A. Niemeier, Vonnie Pietsch, Todd Porter, Jo Ann Rodenbiker, Sally M. Sandvig, Dale C. Severson (until his death on November 4, 2003), Gerald Uglem, and Don Vigesaa.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2004. The Council accepted the report for submission to the 59th Legislative Assembly.

NURSING HOME SURVEY PROCESS

Section 14 of 2003 House Bill No. 1004, the appropriations bill for the State Department of Health, directed a study of the nursing home survey process, including a review of federal, state, and local agency procedures and requirements that result in additional costs, duplicated procedures, and added regulations for nursing homes. In addition, the committee was directed to study the potential for mitigating the impact of new mandated federal rules through collaboration between the State Department of Health and the Department of Human Services and the submission of waiver requests. The committee studied the potential for mitigating the impact of **all** mandated federal rules, state licensing, and other governmental requirements.

Nursing Home Certification and State Licensure

Nursing homes that provide services to residents for reimbursement under Medicare or Medicaid must be certified as meeting certain federal minimum requirements established by Congress. Certification is achieved through routine facility surveys performed by states under contract with the Centers for Medicare and Medicaid Services. There are two types of federally required nursing home surveys conducted, commonly referred to as **health and life safety code surveys**. The State Department of Health is the agency responsible for conducting both types of nursing home surveys.

North Dakota Administrative Code Section 33-07-03.2-03 requires nursing homes to obtain a license from the State Department of Health to operate in North Dakota. The State Department of Health issues renewal licenses to nursing homes found to be in compliance with licensing requirements, as determined by periodic unannounced health and life safety code surveys conducted by the department. Nursing homes are not subject to federal survey requirements if they do not participate in the Medicaid or Medicare program; however, all facilities must meet the state licensing requirements.

The Department of Human Services has an agreement with the State Department of Health to complete the survey process for nursing homes that wish to participate in the Medicaid program. The Department of Human Services pays the survey costs relating to the Medicaid program. The Department of Human Services appropriation for the 2003-05 biennium includes approximately $1.6 million, of which approximately $400,000 is from the general fund, for nursing home survey costs.

Health Surveys

The committee learned the State Department of Health survey protocol includes interviewing a sample of residents and family members about the residents' life within the nursing home, interviewing caregivers and administrative staff, and reviewing clinical records. Title 42 of the Code of Federal Regulations, Part 483, provides detailed federal regulatory standards that nursing homes must meet. Health surveys examine various areas of service provided by nursing homes, including administration, quality of care, residents' rights, and dietary services.

The committee learned there are 84 state-licensed skilled nursing homes in North Dakota--81 of which are certified for both Medicare and Medicaid and 3 are certified for Medicare only. The State Department of Health health program survey teams conduct both state licensure and federal certification surveys during the same visit. The team spends approximately 10 percent of its time on state licensure requirements and 90 percent on federal certification requirements. Nursing homes may apply to the Centers for Medicare and Medicaid Services for waivers from federal regulatory standards. However, North Dakota does not have any approved temporary waivers relating to the health survey standards.

Life Safety Code Surveys

The committee learned the State Department of Health is the only entity in North Dakota which conducts Life Safety Code compliance surveys in nursing homes. Life Safety Code surveys follow the National Fire Protection Association Standard 101, which sets minimum building design, construction, operation, and maintenance requirements necessary to protect building occupants from dangers caused by fire, smoke, and toxic fumes. Section 483.70 of Title 42 of the Code of Federal Regulations requires nursing homes to meet the provisions of the Life Safety Code. The committee received information from representatives of the State Fire Marshal's office, State Department of Health, Department of Human Services, and the State Building Code function of the Department of Commerce regarding ways to improve communication and collaboration among agencies with Life Safety Code inspection responsibilities associated with nursing home construction projects.

The committee learned prior to 1995 the State Fire Marshal's office conducted Life Safety Code surveys under contract with the State Department of Health. The contract with the State Department of Health was discontinued because of funding and staffing concerns that prevented the State Fire Marshal from conducting the surveys.

The committee learned that state licensing rules for nursing homes require the State Department of Health to review and provide prior approval for plans and specifications for all construction, modifications, and alterations of nursing homes to ensure that all applicable standards are met, including the Life Safety Code, Americans with Disabilities Act, and electrical and plumbing standards. The department reviews construction plans submitted by each facility and relies on the facility, its architect, and contractors to construct each project in accordance with the reviewed plan.

The committee learned the State Department of Health has not identified any cases in which a Life Safety Code violation was overlooked during the planning review. Representatives of the State Department of Health indicated a nursing home's architect is responsible for quality assurance and should have an understanding of Life Safety Code regulations. The nursing home's architect would most likely be responsible for costs incurred to correct Life Safety Code violations if such provisions are addressed in the contract.

The committee learned the State Department of Health employs two Life Safety Code surveyors who conduct approximately 200 onsite, unannounced surveys per year. The department indicated it does not have sufficient staff to inspect construction prior to occupancy of a building. The committee learned the State Department of Health had proposed in its 2003-05 biennium budget request adding one full-time equivalent position and $84,568 in special funds from increases in hospital licensing fees to conduct Life Safety Code reviews during the construction process, which was not approved.

The committee learned that the State Department of Health does not "track" the annual number of construction projects undertaken by North Dakota nursing homes. Representatives of the State Department of Health indicated approximately 75 to 100 plans for nursing home construction projects of various sizes have been approved by the department during the first eight months of 2004. However, the number of projects that will exceed $250,000 in cost was not available. Members of the committee indicated that the State Department of Health should be able to provide Life Safety Code construction inspections within its budget for the most expensive nursing home projects undertaken each year.

The committee heard testimony from a representative of the North Dakota Long Term Care Association regarding the value of Life Safety Code inspections during the construction process. Additional inspections prior to completion or "signing off" on a construction project would make it easier for nursing homes to hold contractors and architects responsible for correcting Life Safety Code violations and allow the nursing homes to avoid additional unexpected costs. The association would support a per project inspection fee or a general fund appropriation to the State Department of Health to fund the additional inspections but would not support an increase in licensing fees. The State Department of Health does not have statutory authority to charge for the inspection of nursing homes during the construction process.

The committee learned the Department of Commerce role in the issue is maintaining, updating, and promoting the North Dakota State Building Code. The Life Safety Code, however, is not a building code and is not part of the State Building Code. Life Safety Code

inspections are required annually, while the State Building Code inspections are only necessary for new construction or remodeled buildings. North Dakota Century Code Chapter 54-21.3 provides for a State Building Code but does not require cities, counties, and townships to enforce the code. The law permits cities, counties, and townships to amend the State Building Code to meet local needs. The committee learned most local governments do not have the capacity to enforce the State Building Code and thus the Life Safety Code survey may be the first onsite inspection that occurs at a nursing home.

Nursing Home Deficiency Citations

The committee received testimony from representatives of nursing homes regarding the nursing home survey process and the issuance of deficiency citations, including:

1. The survey process is an adversarial relationship between the State Department of Health and each nursing home, instead of a relationship with a team of professionals who have the same common goal.
2. The survey process sometimes generates unnecessary costs to a nursing home.
3. Nursing homes that have repeat citations within certain areas have experienced significant increases in general liability insurance rates.
4. Many nursing homes believe the informal dispute resolution process does not work.

When a State Department of Health survey team determines that a nursing home does not meet a specific regulation, the department issues a deficiency citation based on the scope and severity of the violation. The State Department of Health has 10 working days to send the deficiency citation to the nursing home and a nursing home has to respond with a written plan of deficiency correction to the State Department of Health within 10 calendar days.

If a plan of deficiency correction is not acceptable, the Centers for Medicare and Medicaid Services is consulted and must concur with survey findings before the Centers for Medicare and Medicaid Services will impose a remedy or action necessary for the nursing home to correct the deficiency. Depending on the nature of the deficiency citation, various remedies are enforced against the nursing home, ranging from Category 1 remedies, which include state monitoring, directed plans of correction, or directed inservice training to Category 2 remedies, which include civil penalties of $50 to $3,000 per day and deny Medicaid payment for new admissions or all residents. The State Department of Health follows up with the nursing home to verify that the concerns were corrected and once verified, the nursing home receives recertification. If problems are not corrected, the Centers for Medicare and Medicaid Services may terminate its agreement with the nursing home or assign additional penalties of up to $10,000 per day.

The committee learned the Centers for Medicare and Medicaid Services mandates a Category 2 remedy for a nursing home that for two consecutive years receives a Level G deficiency rating--an isolated case that results in a negative outcome that has negatively affected a resident's ability to achieve his or her highest functional status. The State Department of Health will notify the nursing home 15 days prior to the actual enforcement of the ban or denial of payment for new admissions. The nursing home may use that period to fill resident vacancies and if the deficiency is corrected during the period, the ban will be rescinded.

The committee learned the State Department of Health is required to follow federal regulations when conducting surveys of nursing homes and is subject to annual review by the regional office of the Centers for Medicare and Medicaid Services. Approximately 98 or 99 percent of deficiency citations are related to federal requirements. If the state surveyors do not follow federal regulations, the state survey team will receive a low review score and the state could possibly lose federal Medicaid funds. State surveyors are not allowed to make informal recommendations to health care facilities during the survey process.

Informal Dispute Resolution Process

The informal dispute resolution process provides an opportunity for nursing homes to present evidence to the State Department of Health that will refute deficiencies or correction orders. According to the state operations manual, which is based on a federal publication that defines the requirements for the informal dispute resolution process, the state survey agency makes the final decision. The Centers for Medicare and Medicaid Services has issued directives to state survey agencies providing that an independent, informal dispute resolution process may serve only as a recommendation to the state survey agency and the Centers for Medicare and Medicaid Services will not reimburse state agencies for costs associated with an outside review process.

Recommendations

The committee encourages the State Department of Health to review Life Safety Code inspection procedures and provide options, within available resources, to the 59th Legislative Assembly (2005) for the State Department of Health to provide for any construction inspections necessary to ensure compliance with the Life Safety Code upon completion of a construction project.

PHARMACY ASSISTANCE PROGRAM STUDY

The 58th Legislative Assembly (2003) approved House Bill No. 1430 which provided for the establishment of a medical assistance drug use review program and drug prior authorization program in the Department of Human Services and authorized the creation of a 15-member Drug Use Review Board. The board's duties include cooperating with the department to create and implement a prospective and retrospective drug use review program for outpatient prescription drugs for the

medical assistance or Medicaid program. Section 11 of 2003 House Bill No. 1430 directed a study of the value of the medical assistance program's use of benefit purchasing pools, preferred drug lists, and other pharmacy benefit management concepts, including the fiscal impact of the appeals and grievance process on existing programs.

North Dakota's Medicaid Prescription Drug Costs

The 58th Legislative Assembly appropriated $95,207,239, which includes $25,712,069 from the general fund, for prescription drug costs in the Medicaid program. This represents an increase of $16,091,517, or 16.9 percent more than the 2001-03 biennium appropriation. The increase in Medicaid prescription drug costs is attributed to increased drug costs, the changing structure of health care, the development and use of more expensive drug treatments, and the increasing number of prescriptions.

The committee learned that as of January 2004, the average cost of a prescription paid for by the North Dakota Medicaid program was $55. The average cost of a brand name drug prescription was $95, compared to the average cost of a generic drug prescription of $19. Approximately $4.8 million is paid monthly for Medicaid prescription drugs, with approximately 22,000 Medicaid recipients having at least one prescription filled each month. Each recipient has an average of four prescriptions filled each month.

The North Dakota Medicaid program began requiring a $3 recipient copayment for brand name drugs in August 2002. A copayment is not required for generic drugs. Prior to the copayment requirement, 55 percent of Medicaid medication purchases were for brand name drugs and 45 percent were for generic drugs. In June 2004, 48 percent of medication purchases were brand name drugs and 52 percent were generic drugs. Every 1 percent increase in the use of generic drugs saves the Medicaid program approximately $850,000 a year, of which $269,000 is from the general fund.

North Dakota's Medicaid pharmaceutical reimbursement rates are based on the average wholesale price less 10 percent for brand name drugs and the maximum allowable cost for generic drugs. The dispensing fee rate paid pharmacies is $5.60 for generic drugs and $4.60 for brand name drugs.

North Dakota currently has over 300 Medicaid recipients on a "lock-in" or "coordinated care" program. These individuals are required to select one physician, one pharmacy, and one dentist to assume primary responsibility for their care. This program allows all providers of care to gain more insight into a patient's overall care and to prevent misutilization of medical services.

An applicant or enrollee has a right to appeal to the Department of Human Services if there is a reduction, termination, or denial of Medicaid benefits. A grievance is a process of appealing to the Department of Human Services a Medicaid-related decision other than coverage of health services or payment of benefits, including matters such as not including a drug on a preferred drug list or requiring prior authorization for a particular drug.

Drug Use Review Board

The Drug Use Review Board is an advisory board consisting of 15 members. The pharmacy administrator of the Department of Human Services and the medical consultant to the department are ex officio nonvoting members. The remaining 13 members of the board are appointed by the executive director of the Department of Human Services and include physicians and pharmacists residing in varying locations throughout North Dakota with various areas of expertise. The board members serve staggered three-year terms. The board meets at least quarterly and may meet at other times by teleconference or electronically.

The federal statutory authority for the Drug Use Review Board is contained in the Code of Federal Regulations. These regulations require states to establish a Drug Use Review Board and prescribe the professional makeup of the Drug Use Review Board. The Code of Federal Regulations provides that the state Medicaid agency is ultimately responsible for ensuring that the drug use review program is operational and conforms with the regulations. The state Medicaid agency has the authority to accept or reject the recommendations of the Drug Use Review Board.

Prior Authorization Program

Prior authorization is a process in which certain drugs cannot be prescribed until authorization is received from a Medicaid agency or insurer. The Department of Human Services provides related medical and clinical criteria, cost information, and utilization data to the Drug Use Review Board for review and consideration. The board considers the department's data and information from other sources in deciding whether to place a drug on the prior authorization list.

The committee learned there is very little difference between a preferred drug list and a prior authorization program. A preferred drug list is a newer term describing a broad prior authorization program. North Dakota's prior authorization program does not allow "supplemental rebates" or additional discounts from drug manufacturers in exchange for keeping medications off the prior authorization list, which is the primary difference between a preferred drug list and a prior authorization program. The committee heard testimony from representatives of the Department of Human Services indicating that additional Medicaid cost-savings could be realized if the state allowed supplemental rebates.

North Dakota's prior authorization program permits a pharmacy to issue a five-day supply for new prescriptions, which is intended to cover the time needed for the pharmacy to complete the prior authorization form, receive documentation from the physician, and submit the form to the Department of Human Services. The Department of Human Services is required to respond to the prior authorization request within 24 hours.

The committee learned that as of August 2004, the Drug Use Review Board has required prior authorization for two classes of drugs--antihistamines and proton pump inhibitors, used to treat acid reflux disease. Any medication within these drug classes that is not on the approved list requires authorization from the Department of Human Services before it can be prescribed to a Medicaid recipient. The savings per dose realized from the preapproved medications as compared to the medications that require prior authorization are $1.70 for the antihistamines and $3.58 for the proton pump inhibitors. The Medicaid program currently pays for more than one million doses per year in each of these two drug classes.

The 58th Legislative Assembly appropriated $1,450,000, of which $725,000 is from the general fund, for the Department of Human Services to contract with a vendor to provide prior authorization services for the 2003-05 biennium. The committee learned that because of the limited number of drug classes requiring prior authorization, the Department of Human Services was initially able to internally operate the prior authorization program. However, the Department of Human Services plans to issue a request for proposals for prior authorization services prior to December 31, 2004. The anticipated cost for a vendor to operate the prior authorization program for the 2005-07 biennium is approximately $1,450,000.

Prescription Connection for North Dakota Program

The committee received information on the Prescription Connection for North Dakota program administered by the Insurance Commissioner's office, pursuant to NDCC Section 26.1-01-11. Prescription Connection for North Dakota is a program that connects qualified, low-income people with discount prescription drugs direct from the pharmaceutical manufacturer. The goal of the program is to provide as much access to information on pharmaceutical assistance programs as possible to residents while also providing one-on-one assistance, if necessary. There are over 150 volunteers statewide providing program assistance to individuals. As of May 2004 approximately 5,000 North Dakota residents received assistance from the Prescription Connection for North Dakota Program, with total benefit savings realized of approximately $2.5 million. The web site address for the program is *www.rxconnectnd.org.*

Federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003

The committee received information on the federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003, including its impact on the state Medicaid program. Phase 1 of the federal program, in place from June 2004 to December 2005, provides for the issuance of a prescription drug card and an annual $600 drug credit to certain low-income Medicare beneficiaries. Eligible Medicare beneficiaries who do not have other prescription drug coverage may receive one of several cards offered by various entities which provide discounts of up to 25 percent for certain prescription drugs. The discount cards vary as to the types of drugs covered in each class and may cost up to $30. Medicaid recipients already receive drug coverage and thus will not be eligible for a discount card.

Phase 2 of the federal program, referred to as Medicare - Part D, begins in January 2006 and establishes a drug payment program for Medicare recipients. Phase 2 provides subsidies to pay for all or part of monthly insurance premiums, deductibles, cost-sharing, and coverage limits based on an individual's income and assets. The Medicare program will be required to pay for dual-eligible recipients, or individuals who receive Medicare and also some form of Medicaid assistance, enrolled in Medicare - Part D. However, state Medicaid programs are required to pay a portion of related Medicaid savings to the federal government. This "clawback" provision requires states to originally pay 90 percent of the estimated state savings back to the federal government, which is gradually reduced to 75 percent of savings by 2014.

Other information and Testimony

The committee received information from Dr. Randy Seifert, PharmD, Seifert and Associates, Santa Barbara, California, on prescription drug cost containment programs. The committee learned there has been an increase in the use of tiered pharmacy benefit programs, with three-tiered programs being the most common. A tiered program requires varying copayments based on the drug utilized. A three-tiered program consists of generic drugs, preferred brand name drugs, and nonpreferred brand name drugs, with generic drugs having the smallest percentage copayment and nonpreferred brand name drugs the largest. Increases in copayments generally result in reduced utilization of prescription drugs, with the greatest impact on individuals who make less than $25,000 per year.

The committee learned advertising by pharmaceutical companies provides consumers with a better awareness of disorder treatment; however, it may also increase unnecessary drug utilization. It is estimated 13 percent of adults in the United States have received a specific prescription in response to a drug advertisement.

Several factors have been identified that increase prescription drug utilization and costs, including:

- Greater public perception of the value of pharmacies.
- Increase in disease identification.
- Changes in treatment options.
- Changes in demographic - An older population.
- Increases in direct consumer advertising.
- Changes in physician practice patterns.
- Increases in outpatient treatment, made possible by drug treatments.
- Increases in new pharmaceuticals.

Private insurers are able to negotiate significant discounts with pharmaceutical manufacturers for certain classes of drugs based on the insurer's volume of purchases or "market share." Private insurers do not

negotiate for discounts on other types of drugs, such as antipsychotic medications, in which the Medicaid program has a large "market share." Because price rebates received by states are often based on the private insurer's negotiations with drug manufacturers, states have formed purchasing pools to negotiate additional volume discounts.

Dr. Seifert informed the committee pharmacies commonly purchase drugs in bulk, repackage the drugs, and receive a new National Drug Code number for the repackaged product. Each National Drug Code number is assigned a new average wholesale price, which may result in the pharmacy receiving a larger Medicaid reimbursement than provided by the original or "innovator" National Drug Code. The committee learned a state Medicaid program could limit reimbursement to pharmacies based on the average wholesale price provided by the "innovator" National Drug Code, rather than the repackaged product.

The committee received information from a representative of Outcomes Pharmaceutical Health Care regarding Outcomes medication therapy management services, a prescription drug cost containment program. The program is a health care benefit offered in Florida, Iowa, and other states which provides covered members with services from specially trained local pharmacists. These services include comprehensive medication review, medication cost management, drug dosage and compliance monitoring, drug information, and over-the-counter medication consultation. Fees for the program are based on a per member per month basis. The fees collected are placed in a "risk pool" to pay pharmacists for providing covered services and for administrative costs. Cost-avoidance savings, based on a cost-avoidance model, are guaranteed by Outcomes Pharmaceutical Health Care to exceed the annual program costs or the company will refund the difference.

The committee learned that the Department of Human Services is evaluating alternatives for a quality assurance program to be recommended for possible implementation during the 2005-07 biennium. The department will recommend a program that will achieve the most desired results within available resources.

Recommendations

The committee makes no recommendations relating to its pharmacy assistance program study.

MEDICAID PROGRAM STUDY

Section 16 of 2003 Senate Bill No. 2012 directed a study of the feasibility and desirability of establishing an advisory council for the Medicaid program of the Department of Human Services. The committee received approval from the chairman of the Legislative Council to expand the study to include a review of Medicaid payments, access to services, and utilization.

Medical Assistance Program Advisory Council

The North Dakota Medicaid program was authorized in 1966, pursuant to NDCC Section 50-24.1-01, for the purpose of strengthening and extending the provisions of medical care and services to people whose resources are insufficient to meet such costs. Pursuant to Title 42, Code of Federal Regulations, Section 431.12, the Department of Human Services is required to have a Medical Care Advisory Committee for the purpose of advising the department about health and medical services, including participating in policy development and program administration.

The Medical Care Advisory Committee reviews and makes recommendations regarding any major changes the department intends to implement in the Medicaid program. The committee consists of both providers and recipient members who are appointed for either two-year or three-year terms.

Medicaid Program

Medicaid is a joint state/federal program established by Congress in 1965 and designed to pay for the health care of certain low-income citizens. The program is optional; however, states that decide to participate must abide by federal laws and regulations. Participating states are required to maintain a state plan that describes the groups covered, types of services provided, the method of payment used for each type of service, and other administrative aspects of the program. The Medicaid program must include certain services, while other services can be provided at the state's option. Coverage of certain categories of recipients are also mandatory.

The federal government shares in the cost of providing services to recipients based on the federal medical assistance percentage for each state. The federal medical assistance percentage is a complicated formula that uses a three-year average of per capita income in each state compared to the national average. North Dakota received an enhanced federal medical assistance percentage as federal temporary fiscal relief to states, from April 1, 2003, through June 30, 2004. The Department of Human Services received $19.6 million as a result of the enhanced federal medical assistance percentage. North Dakota's federal medical assistance percentage rate, however, decreased from 71.31 to 68.31 percent on July 1, 2004, and is projected to decrease to 67.49 percent on October 1, 2004, and 65.85 percent on October 1, 2005. The potential impact of this reduction is an estimated reduction of $34 million for the 2005-07 biennium.

The total 2003-05 Department of Human Services appropriation for medical assistance services is $902.6 million, of which $265.4 million is from the general fund. The 2003-05 appropriation for long-term care services, including nursing home services, is $358 million, of which $122.4 million is from the general fund.

States are required to provide Medicaid services to certain categorically eligible recipients, including:

- Children and adult caretakers if deprivation exists because of parental absence, incapacity, unemployment, or underemployment.

- Individuals eligible for supplemental security income because they are either aged, blind, or disabled.
- Children eligible for foster care or subsidized adoption.
- Poverty level children and pregnant women.

The committee learned the Department of Human Services adjusted its fee schedules for the service payments for elderly and disabled to conform to an Attorney General's opinion providing that the use of estimated prescription drug costs in determining income levels was not the intent of the 58th Legislative Assembly. The department reviewed each client's income and actual prescription drug costs for retroactive adjustments necessary to conform with the Attorney General's opinion. Approximately 225 people received a service fee reduction based on the revised fee schedules.

Managed Care Program

The committee learned the Department of Human Services Medicaid program has operated a managed care program in Grand Forks County since 1997. In January 2004 the program was expanded to include Walsh and Pembina Counties. Adult caretakers and most children are eligible to enroll in the managed care program. The program does not cover the aged, blind, or disabled, which are considered high-risk groups. Federal regulations require that Medicaid recipients have a choice of enrolling in the managed care plan or opting for the primary care provider program. Approximately 818 individuals are enrolled in the managed care plan. Under the managed care program, monthly payments are provided to a managed care service provider based on the age and gender of each recipient. The managed care provider is responsible for all necessary medical services outlined in the contract and is at risk if costs exceed payments. The objective of the managed care plan is to ensure that recipients receive preventive and other appropriate services and to reduce overall health care costs. The 2003-05 biennium managed care program cost is approximately $2.9 million, of which $900,000 is from the general fund. The Department of Human Services realizes an estimated 2 to 3 percent savings from the managed care program.

Methamphetamine Addiction Issues

The Budget Committee on Health Care met with the Budget Committee on Human Services to receive testimony regarding issues relating to methamphetamine addiction and treatment. The committee learned that studies have found that prison drug treatment services are most effective when provided just prior to an inmate's release. An individual needs to be drug-free prior to receiving drug addiction treatment or it is not effective.

The committee learned the Department of Corrections and Rehabilitation collaborates with human service centers in providing treatment services to inmates following the inmates' release from prison. The type of treatment services provided is primarily based on the severity of the addiction, rather than the type of drug used. The physical effects of methamphetamine use include high blood pressure, strokes, seizures, irregular heartbeat, and impaired regulation of body heat. The mental effects of the drug include euphoria, irritability, paranoia, hallucinations, and depression.

The committee learned the Department of Human Services will develop protocols for interventions with families when parental use of methamphetamine or other chemicals is a risk or safety concern for children. Approximately 15 percent of foster care cases are the result of methamphetamine manufacturing, use, or selling. Child welfare cases require significantly more staff time when the case involves a family member who uses methamphetamine. Counties have incurred significant costs relating to the testing, decontamination, and medical evaluation of children exposed to methamphetamine.

Medicaid Management Information System

The 58th Legislative Assembly appropriated $1.6 million, of which $160,000 is from the general fund, for the Department of Human Services to complete the planning phase for replacing the 25-year-old Medicaid management information system. The committee learned that Fox Systems, Inc., was hired to assist in determining the cost of a Medicaid management information system replacement system, produce a cost-benefit analysis of replacement options, and document current and future needs of the system. Final project reports are scheduled to be completed in fall 2004. In addition, Fox Systems, Inc., will conduct a cost-benefit analysis to determine if it is feasible to modify the Workforce Safety and Insurance system to meet the Department of Human Services Medicaid management information system certification standards. A new Medicaid management information system is estimated to cost $29 million, of which $2.9 million, or 10 percent, is from the general fund.

The committee learned that changes were made to the Medicaid management information system in April 2003 relating to third-party payer requirements of the Health Insurance Portability and Accountability Act (HIPAA). The changes caused problems to the system and resulted in a large number of "suspended" claims. Prior to April 2003 the "suspense" inventory averaged approximately 18,200 claims. Beginning in April 2003 the number of claims increased dramatically and reached a peak of almost 62,000 in October 2003. The Medicaid claims processing staff worked many hours of overtime to complete programming changes necessary to process the claims more efficiently. As of July 31, 2004, the number of "suspended" claims had been reduced to 25,591.

Recommendations

The committee makes no recommendations as a result of its study of the Medical Assistance Program Advisory Council and the Medicaid program.

MANDATED HEALTH INSURANCE COVERAGE

North Dakota Century Code Section 54-03-28 provides that the Legislative Council is to contract with a private entity, after receiving one or more 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.

Pursuant to NDCC Section 54-03-28, 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 Insurance Commissioner is to pay the cost of the contracted services, and 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 administrative expenses of insurers and the premium and administrative expenses of insureds.
4. The impact of the proposed mandate on the total cost of health care.

58th Legislative Assembly Cost-Benefit Analyses

During the 2003 legislative session, a total of $24,316 was paid to Milliman USA for conducting cost-benefit analyses relating to three separate bills--Senate Bill No. 2210 ($7,867) and House Bill Nos. 1247 and 1349 ($16,449). Senate Bill No. 2210, providing coverage for substance abuse treatment, was approved by the 58th Legislative Assembly. House Bill No. 1247, providing for outpatient prescription drugs, and House Bill No. 1349, providing for colorectal cancer screenings, were not approved by the 58th Legislative Assembly. The 58th Legislative Assembly authorized $55,000 from the insurance regulatory trust fund, the same as the 2001-03 biennium appropriation, for payment of cost-benefit analyses of the 59th Legislative Assembly measures mandating health insurance coverage.

Insurance Commissioner Recommendations

The Insurance Commissioner recommended that based on the work done during the 58th Legislative Assembly, the Legislative Council contract with Milliman USA for the 59th Legislative Assembly.

Recommendations

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

COMMUNITY HEALTH GRANT PROGRAM

Pursuant to NDCC Section 23-38-02, the State Health Officer is to provide reports to the Legislative Council regarding the implementation of the community health grant program no later than September 30, 2004. The Legislative Council assigned this responsibility to the Budget Committee on Health Care.

Community Health Trust Fund

The 56th Legislative Assembly passed House Bill No. 1475, which created a tobacco settlement trust fund for the deposit of all tobacco settlement money received by the state. Through August 31, 2004, North Dakota has received tobacco settlement trust fund collections totaling $129,775,775, 10 percent or $12,977,577 of which has been transferred to the community health trust fund.

House Bill No. 1004 (2003) appropriated $4.7 million from the community health trust fund for the community health grant program for the 2003-05 biennium, which is allocated pursuant to NDCC Section 23-38-01 to student tobacco programs (40 percent), county tobacco programs (40 percent), and state aid (20 percent) and appropriated $680,000 from the community health trust fund for a tobacco "quit line." Senate Bill No. 2297 (2003) appropriated $600,000 from the community health trust fund--$100,000 for funding the Community Health Grant Program Advisory Committee and $500,000 for grants for city, county, and state employee tobacco cessation programs. Senate Bill No. 2297 provides that any unspent 2001-03 biennium funds for city and county tobacco cessation programs may be continued into the 2003-05 biennium. A total of $204,053 of 2001-03 biennium unspent funds for the city and county employee tobacco cessation program was continued into the 2003-05 biennium.

Tobacco Programs

The primary purpose of the community health grant program is to prevent or reduce tobacco usage by strengthening North Dakota's community-based public health programs. The community health grant program addresses four broad goals:

1. Preventing initiation of tobacco use among youth.
2. Promoting quitting among youth and adults.
3. Reducing nonsmokers' exposure to secondhand smoke.
4. Identifying and eliminating disparities in tobacco use among specific population groups.

The committee received information regarding tobacco cessation efforts in North Dakota. Typically, it takes many years for a tobacco program to achieve reductions in the number of people using tobacco or to result in a reduction in illness and death from tobacco use; however, North Dakota has some very encouraging trends. Based on the 2003 youth risk behavior survey for grades 9 through 12, the percentage of students identified as smokers decreased to 30 percent, as compared to 35 percent in 2001 and 41 percent in 1999.

The percentage of students who use smokeless tobacco has decreased to 10 percent, as compared to 13 percent in 2001 and 15 percent in 1999. The percentage of students who were younger than 13 when they smoked their first cigarette has decreased to 37 percent, as compared to 44 percent in 2001.

The committee learned the State Department of Health will "track" outcomes of the city, county, and state employees in tobacco cessation programs for 3, 6, 9, and 12 months after participation in the program. Local public health units have established cessation programs in 69 locations in 42 counties in North Dakota. Data from cessation programs that have been in existence for more than one year indicate 12-month quit rates ranging from 33 to 58 percent. Research has indicated that a high percentage of individuals who have quit smoking for more than one year tend not to start smoking again.

The North Dakota Public Employees Retirement System smoking cessation program is designed to help state employees and family members to stop using tobacco. The members who participate in the program are enrolled in tobacco cessation counseling at local agencies or public health units. The program provides reimbursement for eight weeks of counseling services and medication to facilitate smoking cessation. A total of 26 members, including 18 employees and 8 family members, participated in the program from January to June 2004. Participants had used tobacco an average of 25.9 years before entering the program.

The committee learned all county jails in North Dakota except the county jail in Rolette County are smoke-free. Also, the State Penitentiary, Youth Correctional Center in Mandan, county detention centers for youth, and youth group homes and residential treatment centers are smoke-free.

The tobacco "quit line" was implemented on September 20, 2004. It is a collaborative effort with the University of North Dakota Department of Community Medicine and the Mayo Clinic tobacco "quit line." The Mayo Clinic tobacco "quit line" staff will oversee the training of the North Dakota staff.

The committee learned the State Department of Health anticipates the entire $4.7 million in grants for the community health grant program will be spent by local public health units. Approximately $1.68 million, or 44.8 percent, of the $3.76 million appropriated for county and student tobacco programs was spent during the first year of the 2003-05 biennium.

Recommendations

The committee makes no recommendations regarding the implementation of the community health grant program.

STATE BOARD OF NURSING REPORT

North Dakota Century Code Section 43-12.1-08.2, which is effective through September 30, 2006, provides that the State Board of Nursing may review and study the nursing educational requirements and the nursing shortage in this state and the implications for rural communities. The State Board of Nursing is to report annually on the progress of the study, if undertaken, to the Legislative Council. The Legislative Council assigned this responsibility to the Budget Committee on Health Care.

Nursing Shortage Study

The committee learned that the State Board of Nursing contracted with the University of North Dakota Center for Rural Health in 2002 for a two-year study of the nursing educational requirements and the nursing shortage in North Dakota and the implications for rural communities. The study concluded:

1. Salary and benefits for both clinical nurses and nursing faculty should be increased to reflect training and experience.
2. The number of students admitted to nursing education programs should be increased and distance learning or alternative programs should be offered.
3. The work environment for nurses should be improved by increasing nurses' representation in decisionmaking.
4. Staffing levels should be adjusted to allow nurses to provide more direct patient care and a less stressful work environment.
5. Recruitment efforts should be increased to develop more interest in the nursing field.

The committee learned that based on reports from nursing education programs, the number of nursing students in North Dakota has remained stable or increased. There are approximately 11,000 licensed nurses in North Dakota. However, a large number of nurse retirements are expected in the next few years. The greatest shortage of nurses is in rural areas and approximately 63 percent of North Dakota nurses are located in the eight most populous counties.

The committee learned that, as part of the study, surveys were conducted of public health agencies, nursing students, licensed nurses, public health agencies, hospitals, and other health care facilities. Nursing students attending North Dakota nursing programs; Northland Community College in East Grand Forks, Minnesota; Minnesota State University - Moorhead, Minnesota; and Concordia College in Moorhead, Minnesota, were included in the study. North Dakota residents attending other nursing programs located near the North Dakota border were not included in the survey.

Nursing Education Requirements

The committee learned that as of June 2004, there are 11 nursing programs in North Dakota--6 in North Dakota University System institutions, 3 in private colleges, and 2 in tribal colleges. Collectively these programs have a total enrollment of 298 licensed practical nurse (LPN) students, 881 registered nurse (RN) students, and 153 master's level students. Most of the programs do not maintain waiting lists, but because some students apply to more than one college, there may be waiting lists between the time admission

decisions are made and classes start. The waiting lists are primarily at the LPN program level. Most programs have increased entering class size over the past two years.

The 58th Legislative Assembly approved House Bill No. 1245, which reduced the educational requirements for RN and LPN programs in North Dakota. The committee learned the State Board of Nursing finalized rules for RN and LPN programs to comply with the new law in April 2004. The State Board of Nursing received a proposal for approval in May 2004 from four state colleges that have formed a consortium (the Dakota Nurse program) and plan to begin offering RN and LPN degrees. Those colleges include Williston State College, Minot State University - Bottineau, Lake Region State College, and Bismarck State College. The final site review for the colleges was completed on June 22, 2004.

The committee learned that immediately after the final site review was completed, the State Board of Nursing provided an informal recommendation to the Dakota Nurse program that the curriculum for both the RN and LPN programs needed to be reworked. Representatives of the State Board of Nursing testified that the curriculum did not include all the components necessary for the nursing students to become safe practitioners. Members of the committee encouraged the State Board of Nursing and college representatives to work cooperatively in order to refine the curricula model.

In July 2004 the State Board of Nursing granted initial approval to the Dakota Nurse practical nurse program through July 2005 with an interim report due by January 1, 2005, addressing the areas of partial compliance.

During a September 15, 2004, meeting, the board granted initial approval to the Dakota Nurse associate degree registered nursing program through March 2006. The colleges will be required to verify or address areas of concerns within the next year relating to faculty qualifications, clinical facilities, program and student policies, student satisfaction, and revisions to program evaluation. The Dakota Nurse associate degree registered nursing program is scheduled to start in fall 2005.

The committee learned the State College of Science will continue to offer an associate in applied science degree in licensed practical nursing and has plans for adding a transitional associate degree registered nursing program.

Recommendations

The committee makes no recommendations regarding the State Board of Nursing study of the nursing educational requirements or the nursing shortage.

CHILDREN'S HEALTH INSURANCE PROGRAM REPORT

North Dakota Century Code Section 50-29-02 requires the Department of Human Services to report annually to the Legislative Council and describe enrollment statistics and costs associated with the Healthy Steps program (children's health insurance program). The Legislative Council assigned this responsibility to the Budget Committee on Health Care.

The committee learned that during the federal fiscal year ended September 30, 2003, the Department of Human Services spent $3,455,539 for premium payments to Noridian Mutual Insurance Company, of which $765,403 was from the general fund. The administrative costs for the Healthy Steps program during the same period was $79,677, of which $17,648 was from the general fund.

Phase III of the Healthy Steps program, which provides coverage to those children who were previously ineligible for Medicaid because of excess income, was implemented in January 2002. The Healthy Steps program provides coverage for the children of families whose income does not exceed 140 percent of the poverty level based on net income. Medicaid considers a child to be from birth to 21 years of age. The total expenditures incurred during the federal fiscal year ended September 30, 2003, for Phase III of the program was $3,016,734, of which $668,205 was from the general fund.

The unduplicated number of children enrolled in Medicaid or Healthy Steps since the 1999 federal fiscal year is:

Fiscal Year Ending	Combined Total
September 30, 1999	29,783
September 30, 2000	31,938
September 30, 2001	31,534
September 30, 2002	35,155
September 30, 2003	40,313

The number of children enrolled in the Healthy Steps program as of June 1, 2004, compared to the total population for each region is:

Region (Service Area)	Population of Children Per 2000 Census	Children Enrolled June 1, 2004	Percentage Enrolled
Region 1 (Northwest human service area)	7,869	212	2.7%
Region 2 (North Central human service area)	23,952	298	1.2%
Region 3 (Lake Region human service area)	13,760	230	1.7%
Region 4 (Northeast human service area)	23,555	165	0.7%
Region 5 (Southeast human service area)	41,322	312	0.8%
Region 6 (South Central human service area)	15,089	298	2.0%
Region 7 (West Central human service area)	35,794	556	1.6%
Region 8 (Badlands human service area)	10,437	282	2.7%
Total	171,778	2,353	1.4%

Recommendations

The committee makes no recommendations regarding the children's health insurance program state plan.

BUDGET TOURS

During the interim, the Budget Committee on Health Care functioned as a budget tour group of the Budget Section and visited the Southeast Human Service Center, Fort Abercrombie, and the Veterans Home. In addition, the committee received a budget report on the Northeast Human Service Center. The committee received testimony regarding facility programs, overviews of clients or individuals served, and problems that 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 59th Legislative Assembly.

The committee learned that the Veterans Home is considering requesting approval from the Legislative Assembly to add skilled care beds for dementia and aggressive behavior. The Veterans Administration will pay 65 percent of the cost to operate the units. Because existing staff will be used, it is estimated that a general fund savings of $500,000 per biennium could be realized. Approximately 12 to 14 skilled beds would be added for a dementia unit and 3 to 5 beds for an aggressive behavior unit. Efficiencies would result from a larger unit allowing for more effective staffing patterns.

The 58th Legislative Assembly approved House Bill No. 1007, which authorized the Department of Human Services to purchase eight skilled care nursing beds after April 14, 2003, from funding available from the bed reduction incentive program, pursuant to Section 23 of 2001 House Bill No. 1196, and transfer the purchased beds to the Veterans Home. The committee learned that the Veterans Home would have had to move 17 basic care beds to add the 8 skilled care beds. In addition, there were several Life Safety Code and funding issues that prevented the plan from being financially "viable."

The committee learned the eight skilled care bed addition was estimated to generate an additional $250,000 in special funds revenues for the Veterans Home. The 58th Legislative Assembly reduced the Veterans Home general fund appropriation by $250,000 in anticipation of the additional revenues, which will not be received resulting in a potential general fund deficiency appropriation request for consideration by the 59th Legislative Assembly. Representatives of the Veterans Home indicated that the 2005-07 biennium "hold-even" base budget request does not replace the $250,000 of revenues which would have been received from the skilled care nursing bed addition.

Recommendations

The committee encourages the Veterans Home to present information to the Appropriations Committees during the 59th Legislative Assembly on the cost and feasibility of developing a dementia skilled care unit at the Veterans Home and on the budget adjustments necessary for the 2005-07 biennium to restore funding reductions made in anticipation that eight skilled care beds would be added to the Veterans Home during the 2003-05 biennium.

BUDGET COMMITTEE ON HUMAN SERVICES

The Budget Committee on Human Services was assigned responsibilities in four areas. Senate Concurrent Resolution No. 4001 provided for a study of human service centers, including the delivery of services and the cost versus benefit of those services, the possibility of combining service centers and the administrative costs of the centers related to the programs and clients served, third-party reimbursements, and human service center competition with private providers.

Section 14 of Senate Bill No. 2012 provided for a study of the administrative costs of human service programs, including costs incurred by the central office of the Department of Human Services, human service centers, and county social services and a review of the effects of the 1997 "swap" legislation on state and county human services program costs.

Senate Bill No. 2086 provided that the Legislative Council receive reports from the Department of Human Services regarding its progress in developing a fee-for-service payment system for developmental disabilities treatment or care centers and to receive certification from the department by October 1, 2004, on whether the department and developmental disabilities services providers have reached an agreement on a new fee-for-service payment system.

Section 5 of House Bill No. 1014 provided that the Legislative Council receive a report from the Children's Services Coordinating Committee at least twice during the 2003-04 interim on the amount of "refinancing" funds generated and the uses of the funds for the 2003-05 biennium.

Committee members were Representatives Clara Sue Price (Chairman), Jeff Delzer, William R. Devlin, Gary Kreidt, Vonnie Pietsch, Louise Potter, Robin Weisz, and Alon Wieland and Senators Bill L. Bowman, Richard Brown, Tom Fischer, Joel C. Heitkamp, Aaron Krauter, Judy Lee, Harvey Tallackson, and Russell T. Thane.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2004. The Council accepted the report for submission to the 59th Legislative Assembly.

HUMAN SERVICE CENTER STUDY

Senate Concurrent Resolution No. 4001 provided that the Legislative Council study the delivery of services and cost versus benefit of those services provided by the eight human service centers, to consider the possibility of combining human service centers and the administrative costs of the centers related to the programs and clients served, and to study third-party reimbursement and human service center competition with private providers.

Background

The Department of Human Services operates eight regional human service centers--Northwest Human Service Center in Williston, North Central Human Service Center in Minot, Lake Region Human Service Center in Devils Lake, Northeast Human Service Center in Grand Forks, Southeast Human Service Center in Fargo, South Central Human Service Center in Jamestown, West Central Human Service Center in Bismarck, and Badlands Human Service Center in Dickinson.

The committee reviewed the history of the human service centers and learned they were established in 1982. Previously, services were offered through area social service centers, the regional vocational rehabilitation offices, and mental health and retardation centers. The centers were developed to coordinate and avoid duplication of services and to enhance a comprehensive approach to serving clients.

2003-05 Budget

The following schedule provides the 2003-05 biennium appropriation and the authorized full-time equivalent (FTE) positions for each human service center:

2003-05 Biennium				
Human Service Center	General Fund	Other Funds	Total	FTE
Northwest Human Service Center	$3,630,039	$3,645,640	$7,275,679	51.00
North Central Human Service Center	7,841,196	6,723,674	14,564,870	114.78
Lake Region Human Service Center	4,637,960	3,782,973	8,420,933	63.00
Northeast Human Service Center	7,996,363	11,444,820	19,441,183	136.90
Southeast Human Service Center	9,509,320	11,215,222	20,724,542	184.20
South Central Human Service Center	5,627,107	5,731,868	11,358,975	86.00
West Central Human Service Center	8,463,209	9,121,635	17,584,844	120.00
Badlands Human Service Center	4,365,904	4,558,723	8,924,627	78.00
Mental health contingency	250,000		250,000	0.00
Total	$52,321,098	$56,224,555	$108,545,653	833.88

The committee reviewed information on changes made to the original legislative appropriations and authorized FTE positions for each human service center during the 2003-05 biennium and on the status of each human service center's 2003-05 biennium budget. The committee learned that to assist with providing for undesignated general fund reductions made by the Legislative Assembly, the human service centers were asked to make budget reductions where possible. The centers identified certain administrative and other reductions that reduced total general fund budgets for the centers from $52.1 million to $51.7 million. The committee learned for the first year of the biennium, the human service centers spent a total of $51.1 million of

$109 million available for the biennium, or 47 percent, leaving $57.9 million, or 53 percent, available for the second year of the biennium. Regarding the general fund share of the human service center budgets, a total of $29.3 million was spent the first year, or 57 percent of the $51.7 million available, leaving $22.4 million, or 43 percent, available for the second year of the biennium. The department has not yet allocated the $250,000 general fund appropriation for the mental health contingency pool.

Human Service Center Core Services

The committee reviewed the department's strategic planning process. In the development of the department's strategic plan in 2002, program purpose statements were developed, which clearly identified the reason for each program's existence. The department's strategic plan includes achievement expectations for each program. As part of the planning process, the department has created guiding principles based upon input from regional stakeholder input meetings. These principles provide the basis for creation of the human service center core services. The department's five guiding principles are:

1. The Department of Human Services has the responsibility to serve our state's most vulnerable people.
2. Planning, evaluating, budgeting, and best practices regarding services delivery and allocation of resources are data-driven, evidence-based, and results-oriented.
3. Essential core services are based on individual needs with full consumer involvement and are aimed at optimizing self-sufficiency and independence.
4. Local and natural support systems will be fully engaged and partnerships generated to maximize resources and efficiency.
5. Services will be designed to accommodate specific regional needs with resources allocated in a cost-effective manner to create alternative solutions to reach rural and urban populations.

The department regularly reviews the results of program measures, obtains feedback from stakeholders, evaluates department progress, and uses the information to adjust the department's plans.

The committee reviewed the core services of the human service centers, including:

Aging services
- Aging services administration.
- Vulnerable adult protective services.
- Long-term care ombudsman program.
- Adult family foster care licensure.

Developmental disabilities
- Case management.
- Day supports (Southeast).
- Extended services (Northwest and Badlands).
- Infant development (Northwest, Northeast, Southeast, and South Central).

Vocational rehabilitation
- Assessment for eligibility and rehabilitation needs.
- Counseling and guidance.
- Information and referral.
- Job-related services.
- Vision services.
- Supported employment services (Badlands and Northwest).
- Rehabilitation technology services (Badlands and West Central).
- Business services, including Americans with Disabilities Act consultation and assessment.

Child welfare services
- Program supervision - Regional representatives and child care licensing specialists.
- Parental capacity evaluation.
- Foster parent support services.
- Acute/clinical services as deemed clinically appropriate.

Children's mental health
- Level I criteria
  - Care coordination.
  - Acute/clinical services as deemed appropriate.
- Level II criteria
  - Care coordination.
  - Case aide services.
  - Crisis residential/safe beds.
  - Flexible funding.
  - Acute clinical services as deemed appropriate.

Serious mental illness (extended care coordination)
- Care coordination.
- Case aide services.
- Needs-based array of residential services.
- Community support services.
- Medical management.
- Acute/clinical services as deemed clinically appropriate.

Acute clinical services
- Core populations
  - Self-harm/suicide.
  - Child abuse and neglect.
  - Foster care/subsidized adoption.
  - Acute psychiatric.
- Services
  - Psychological evaluation and testing.
  - Psychiatric evaluation.
  - Clinical evaluation.
  - Individual therapy.
  - Group therapy.
  - Family therapy.
  - Clinical case management.
  - Medication management.
  - Crisis residential.
  - Short-term hospital.
  - Laboratory and clinical screening.

Substance abuse services
- Care coordination/case aide.
- Evaluation.
- Social and medical detoxification services.
- Needs-based array of primary treatment services

Low-intensity outpatient.
Intensive outpatient.
Day treatment.
- Needs-validated residential services.
- Medication/medical monitoring/management.

Crisis/emergency response services
- 24 hours a day 7 days a week crisis call response from a designated, trained center employee.
- Regional intervention services
  Screening.
  Gatekeeping/referral.

Client Waiting Lists - Human Service Centers

The committee reviewed client waiting lists at the human service centers and learned waiting lists vary depending on the type of service. For crisis situations, human service centers respond immediately. For non-emergency service needs, waiting lists may vary from no waiting time to two months. The department's maximum standard for waiting times is 10 days. The committee learned the Southeast Human Service Center has the most concern with excessive waiting times for services.

Shared Human Service Center Services

The committee learned the human service centers have begun sharing administrative and program services, including:

Director
- Lake Region and South Central Human Service Centers.
- Northeast and Southeast Human Service Centers.
- West Central and Badlands Human Service Centers.
- Northwest and North Central Human Service Centers.

Business manager
- Northwest and North Central Human Service Centers.

Child care licensing regional representative
- Southeast and South Central Human Service Centers.
- West Central and Badlands Human Service Centers.

Long-term care ombudsman
- Northwest and North Central Human Service Centers.
- Lake Region and Northeast Human Service Centers.
- Southeast and South Central Human Service Centers (Aging services employee).

Adult protective services
- Northwest and North Central Human Service Centers.

Vision specialist
- Northwest and North Central Human Service Centers.

Developmental disabilities regional program administrator
- West Central and Badlands Human Service Centers.

County Social Services

The committee reviewed the role and responsibilities of county social services. The committee received information on programs administered by county social services, including:

Economic assistance
- Temporary assistance for needy families (TANF).
- Medicaid.
- Food stamps.
- Low-income home energy assistance program (LIHEAP).
- Child care assistance program.
- Child support program.
- Basic care payments.
- County general assistance program.

Counties have just under 300 eligibility workers in 51 county social services offices responsible for determining eligibility and authorizing benefits for clients receiving economic assistance. Counties are the primary resource for low-income individuals and families in need of public benefits and human service centers and private providers are the major referral sources.

Child welfare - County social services provide direct service of these programs with oversight from the regional human service center.
- Child protective services.
- Foster care services.
- Family preservation/support services.
- Regulatory functions.

Home and community-based services
- Case management.
- Homemaker.
- Personal care.
- Respite care.
- Chore services.
- Emergency response system.
- Family home care.
- Adult foster care.
- Adult day care.
- Information and referral.

Access to home and community-based services is available through county social services case management. Counties coordinate referrals, complete assessments, determine eligibility, develop service plans, and authorize payments for in-home care services. The majority of counties also directly provide in-home care services to county residents.

Client Waiting Lists - County Social Services

Regarding waiting lists for county social services, the committee learned the majority of county-administered programs have externally federal- or state-established timelines that counties must meet. Therefore, there are no client waiting lists for county social services.

Shared County Social Services

The committee received information on shared county social services. The committee learned 27 counties share a county social services director, 29 counties share child protective services and child abuse and neglect services, and 18 counties share adult protective services. Counties are continuing to expand the sharing of social services. The committee learned that nine counties in the northeastern part of the state have developed a joint powers agreement to share social services and reduce costs and that Towner, Benson, and Ramsey Counties have entered into a full contractual arrangement for sharing social services.

Private Providers and Cooperative Efforts

The committee received a listing of other organizations and private providers that offer services similar to the services offered by the human service centers by region and reviewed cooperative efforts of the human service centers, county social services, and private providers. The committee learned the number and types of private providers vary by region and the human service centers, county social services, and private providers coordinate efforts to meet the human services needs in each region. Human service centers, county social services, and private providers may serve the same families but may be providing different types of services.

Human Service Center Contracts

The committee received information on Department of Human Services contracts by type of service and by human service center for the 1997-99 through 2003-05 bienniums. The committee learned the department's total contracts have increased from $18.79 million for the 1997-99 biennium to a projected $19.25 million for the 2003-05 biennium.

Human Service Centers - Third-Party Revenue

The committee reviewed a schedule of the department's projected third-party revenue collections at the human service centers for the 2003-05 biennium. Revenue collections are projected to total $28.9 million during the 2003-05 biennium, which is approximately 27 percent of the centers' 2003-05 biennium budgets. Of the total collections, $24.2 million is from Medicaid, $3.5 million from private insurance, and $1.2 million from individuals. Medicaid collections comprise approximately 83 percent of the human service centers' third-party collections. The rates charged by the human service centers are based on actual costs incurred by the human service centers.

Human Service Center Facilities

The committee reviewed the facilities of each human service center, including floor plans, square footage, and costs. The following schedule compares the facility information for the human service centers:

Human Service Center Facilities				
Center	Owned/ Leased	Square Feet	Annual Cost Per Square Foot	Total Annual Cost
Northwest	Leased	23,365	$8.50	$198,603
North Central	Leased	41,182	9.34	384,640
Lake Region	Leased	18,236	9.67	176,342
Northeast	Leased	40,040	12.05	482,482
Southeast	Owned	50,000	8.60	430,000
South Central	Leased	29,917	10.95	327,591
West Central	Leased	38,879	13.54	526,272
Badlands	Leased	23,725	7.61	180,653
Total		265,344	$10.20	$2,706,583

Human Service Center Reporting Format

The committee considered options for human service centers to provide a consistent and comparative reporting format to legislative committees and budget tour groups. The intent of this format is to provide a consistent and comprehensive reporting basis for major human service center programs to allow for an understanding of services provided and clients served and to facilitate comparisons among human service centers. This format is not intended to preclude legislators or legislative committees from requesting other data or the human service centers from providing additional information.

The committee received information from each of the human service centers in the proposed reporting format. The appendix at the end of this report summarizes the information for fiscal year 2003.

Impact of Methamphetamine Addiction

The committee received information on the impact of methamphetamine addiction on the treatment programs of human service centers. The committee learned that methamphetamine addiction has had a significant effect on the treatment services provided by the human service centers and on the child welfare system in the state.

The committee received information on the communications between the Department of Corrections and Rehabilitation and the human service centers regarding the provision of services for individuals released from the corrections system for methamphetamine-related offenses. The committee learned that 30 days prior to an inmate's release, the Department of Corrections and Rehabilitation social workers refer the inmate to a human service center to allow time for information to be exchanged and appointments scheduled to meet the treatment needs of the individual to be released.

The committee received information on the physical, mental, and cognitive effects of methamphetamine use and the difficulty in treating individuals who have used methamphetamine. The committee learned longer term treatment is necessary due to the longer term effects of methamphetamine addiction compared to other drugs.

The committee reviewed the impact of methamphetamine addiction on children and families. The committee learned the number of children in foster care has been increasing and that approximately 15 percent of foster

care cases are the result of methamphetamine manufacturing, use, or selling. The committee learned the increase of children in foster care has substantially increased the caseload of child welfare workers. The department is seeking to address these concerns by analyzing child welfare worker and supervisor caseloads, involving relatives to provide care for children rather than placing the children in foster care, recruiting additional foster care families, and exploring the possibility of performance-based contracting with residential foster care providers.

The committee received information on the seizure and disposition of assets of drug offenders. The committee learned North Dakota Century Code (NDCC) Section 54-12-14 provides the statutory provisions related to the asset forfeiture fund and the uses of money in the fund. The Attorney General is authorized to seize cash and other assets, such as cars, boats, airplanes, guns, drugs, etc., from individuals involved in criminal activities. The Attorney General may spend the proceeds from seized and forfeited assets for drug enforcement purposes, such as drug buys, purchasing equipment, overtime costs, or matching federal drug enforcement grants. When the Attorney General's office is involved in a drug enforcement activity that results in seized and forfeited assets, the agency must share the proceeds of the assets seized with other law enforcement agencies involved in the enforcement effort. The committee learned if money in the fund were to be used for substance abuse treatment costs or for the cost of cleanup of methamphetamine labs, a legislative change to NDCC Section 54-12-14 would be required.

Other Reports and Testimony

The committee heard other reports and testimony, including:

- Information on human service center funding, FTE positions, and clients.
- Demographic information by county and human service region, including information on population categories, trends, and projections.
- The need for more alcohol and drug education in schools to reduce the use of methamphetamine and other drugs and alcohol.
- Concerns of the elderly in the state which include:
  - Having enough money to pay bills.
  - Accessing health care systems.
  - Being able to stay safely at home.

Recommendations

The committee recommends legislative committees and Budget Section tour groups request information from each human service center in the following format, reflecting information for the current and two previous bienniums:

Human Service Center (In Total)

- Funding by funding source, with explanations of any changes from legislative appropriations.
- FTE positions, with explanations of any changes from legislatively authorized levels.
- Major sources of federal and special/other funds.
- Unduplicated number of clients served annually.
- Number of clients served annually - One-time visit only. (This data will be reported beginning with fiscal year 2005.)
- Status of current biennium budget.

Major Program Reporting

Administration

- Summary of services.
- Funding by funding source.
- FTE positions.
- Major sources of federal and special/other funds.
- Administrative costs as a percentage of budget.
- Administrative costs per client served.

Child welfare

- Summary of services.
- Funding by funding source.
- FTE positions.
- Major sources of federal and special/other funds.
- Average number of children in foster care per year.
- Average number of children in foster care placed out of state.
- Number of child abuse and neglect reports per year.
- Percentage of incidence of repeat maltreatment.
- Average time spent in foster care.
- Percentage of foster care reentries within 12 months of previous discharge.

Disability services

- Summary of services.
- Funding by funding source.
- FTE positions.
- Major sources of federal and special/other funds.
- Number of Developmental Center residents from region.
- Unduplicated number of clients served annually
  - Developmental disabilities.
  - Vocational rehabilitation.
- Percentage of clients employed
  - Developmental disabilities.
  - Vocational rehabilitation.
- Average annual earned income of clients - Vocational rehabilitation.
- Average caseload per caseworker
  - Developmental disabilities.
  - Vocational rehabilitation.

Older adult services

- Summary of services.
- Funding by funding source.
- FTE positions.
- Major sources of federal and special/other funds.
- Dollar amount of contracts, number of service sites, and number of individuals served under the Older Americans Act.

- Dollar amount of contracts and number of individuals served
  - Vulnerable adult services.
  - National Family Caregiver support program.

Mental health and substance abuse services

- Summary of services.
- Funding by funding source.
- FTE positions.
- Major sources of federal and special/other funds.
- Contracts with providers by type of service and funding with explanations of major funding changes between bienniums.
- For mental health services
  - Unduplicated number of clients served
    - Individuals with serious mental illness.
    - Individuals with acute mental illness.
    - Children with serious emotional disorders.
  - Average caseload per caseworker
    - Individuals with serious mental illness.
    - Individuals with acute mental illness.
    - Children with serious emotional disorders.
  - Number of State Hospital admissions from region by year.
  - Number of clients in extended employment.
  - Average annual earned income of clients in extended employment.
- For substance abuse services
  - Unduplicated number of clients served.
  - Average caseload per caseworker.
  - Number of State Hospital admissions from region by year.
  - Number of clients with multiple admissions for services
    - Two or three.
    - Four or five.
    - More than five.

Statewide or Unique Programs

- Summary of services.
- Funding by funding source.
- FTE positions.
- Unduplicated number of clients served.

HUMAN SERVICES PROGRAM ADMINISTRATIVE COSTS

Section 14 of Senate Bill No. 2012 provided that the Legislative Council study the administrative costs of human services programs. The study is to include administrative costs incurred by the central office of the Department of Human Services, human service centers, and county social services. In addition, the study is to include a review of the effects of the 1997 "swap" legislation on state and county human services program costs.

Department of Human Services Administrative Costs

The committee reviewed the administrative costs and FTE positions with administrative responsibilities at the department's central office, State Hospital, Developmental Center, and human service centers. Departmentwide 410.2 FTE positions and $95.3 million, or 6.23 percent, of the department's 2003-05 biennium budget are identified as administrative.

County Administrative Costs

The committee reviewed the administrative and other costs of county social services programs. The committee learned:

- County administrative costs of economic assistance programs totaled $21.7 million statewide in state fiscal year 2002.
- The total number of county eligibility staff for economic assistance programs increased by 6.9 percent from 1997 to 2003 and during this same time period, program expectations have increased resulting in additional workload for county staff. Less time is allowed for assessing food stamp cases, increased emphasis is placed on case management for TANF cases, and significantly more time is spent monitoring assets for elderly individuals on medical assistance.
- Counties have attempted to reduce administrative costs and county social services costs by sharing services. Counties have collaborated with one or more counties to jointly administer a number of economic assistance programs, including Health Tracks - 13 counties, TANF eligibility - 16 counties, foster care eligibility - 11 counties, economic assistance supervision - 15 counties. In addition, 23 counties have full-time directors, 4 have part-time directors, and 26 have shared directors. Of the shared directors, one serves a four-county area, three serve a three-county area, and eight serve a two-county area. Of the 23 full-time director positions, 3 have full-time administrative responsibility. Directors in 33 counties provide some type of direct client services, 28 provide social services, and 17 provide economic assistance services.
- In addition to the county administrative costs of economic assistance programs, counties are responsible for costs relating to child welfare, home and community-based services, child support enforcement, and general assistance. County representatives expressed concern regarding the additional funding that is needed to provide county social services.
- Funding for social services programs of the counties has increased from $38.4 million in calendar year 2000 to $46.9 million in calendar year 2002.
- State aid distribution fund allocations to cities and counties increased from $51.5 million in the 1995-97 biennium to an anticipated $69.4 million in the 2003-05 biennium.
- Counites' share of the social services block grant has decreased from $2.2 million in calendar year 1998 to $1.5 million in calendar year 2003.

"Swap" Analysis

The committee reviewed the "swap" agreement, which as approved by the 55th Legislative Assembly (1997) required counties, effective January 1, 1998, to assume financial responsibility for the costs of administering certain economic assistance programs and required the state to assume complete financial responsibility for grant programs, including TANF, basic care assistance, child care assistance, and medical assistance. In addition, the state agreed to provide additional support for administrative costs of counties with Indian land. Statutory provisions relating to these programs are contained in NDCC Title 50.

The schedule below presents legislative appropriations for TANF, basic care assistance, child care assistance, medical assistance, and grants to Indian counties since the 1997-99 biennium:

	1997-99	1999-2001	2001-03	2003-05
TANF				
General fund	$5,700,000	$5,500,000	$3,950,382	$3,950,382
Special funds	4,000,000	6,397,947	10,525,123	12,215,691
Federal funds	31,200,000	13,110,930	11,150,551	13,341,867
Total	$40,900,000	$25,008,877	$25,626,056	$29,507,940
Child care assistance				
General fund				$5,726,109
Special funds	$3,528,016	$3,675,262	$4,013,314	
Federal funds	14,749,420	12,832,634	17,233,719	21,335,096
Total	$18,277,436	$16,507,896	$21,247,033	$27,061,205
Basic care assistance				
General fund	$1,654,727			$747,857
Special funds	4,473,987	$7,690,647	$2,783,072	2,284,362
Federal funds			6,081,186	5,363,506
Total	$6,128,714	$7,690,647	$8,864,258	$8,395,725
Medical assistance[1]				
General fund	$180,467,562	$195,469,683	$217,096,629	$259,872,239
Special funds	7,206,368	8,035,112	36,388,827[2]	12,584,800
Federal funds	422,301,922	471,880,515	550,022,159	596,320,683
Total	$609,975,852	$675,385,310	$803,507,615[2]	$868,777,722
Grants to Indian counties				
General fund		$121,766	$456,993	$649,559
Special funds	$1,059,000	1,654,654	2,068,007	1,964,607
Total	$1,059,000	$1,776,420	$2,525,000	$2,614,166
Total				
General fund	$187,822,289	$201,091,449	$221,504,004	$270,946,146
Special funds	20,267,371	27,453,622	55,778,343	29,049,460
Federal funds	468,251,342	497,824,079	584,487,615	636,361,152
Total	$676,341,002	$726,369,150	$861,769,962	$936,356,758

[1]Includes nursing facilities, intergovernmental transfer payments, and developmental disabilities services grants, but excludes Healthy Steps.

[2]Includes the $16.3 million special funds deficiency appropriation approved by the 2003 Legislative Assembly.

The committee received information on the grant costs of economic assistance programs included in the "swap" agreement by funding source for each biennium since 1995-97 and welfare reform-related computer systems costs paid by the Department of Human Services since the 1995-97 biennium. The following schedule prepared by the Department of Human Services shows the effects of the "swap" agreement on the county and state share of funding for economic assistance programs:

Economic Assistance Grants - "Previously" the County Share			
	Actual Expenditures for 1999-2001 Biennium	Actual Expenditures for 2001-03 Biennium	Estimated Expenditures for 2003-05 Biennium
Traditional Medicaid	$19,018,277	$23,046,095	$26,966,119
Developmental disabilities	3,237,525	3,602,696	4,446,576
Basic care	1,835,862	456,552	428,040
TANF	1,132,032	1,326,077	1,329,506
Job opportunities and basic skills	335,878	636,532	704,321
State Hospital	292,355	311,836	233,474
Child care	833,904	1,178,536	1,259,306
Total additional grants costs assumed by the state	$26,685,833	$30,558,324	$35,367,342

County Administrative Cost - "Previously" State Reimbursement			
	Reimbursement for 1999-2001 Biennium	Reimbursement for 2001-03 Biennium	Estimated Reimbursement for 2003-05 Biennium
Federal funds for economic assistance programs	$24,286,907	$25,218,052	$25,954,276
State funds for IV-D regional units	1,526,632	1,653,300	1,712,074
Total additional administrative costs assumed by county	$25,813,539	$26,871,352	$27,666,350

Overall Effect on Counties and State			
	Reimbursement for 1999-2001 Biennium	Reimbursement for 2001-03 Biennium	Estimated Reimbursement for 2003-05 Biennium
Grant costs in excess of administrative reimbursement	$872,295	$3,686,972	$7,700,992
Additional funds for countywide cost allocation plan fee	232,880	71,828	
Additional computer costs in excess of fiscal year 1995 costs inflated at consumer price index	893,828	1,648,387	1,675,766
Additional Indian county funds provided in excess of $440,000	1,336,421	2,040,976	2,309,176
Avoided county expenditures and corresponding additional state costs	$3,335,424	$7,448,163	$11,685,934

Temporary Assistance for Needy Families

The committee received information on the status of the TANF program reauthorization by Congress, changes made by the Department of Human Services to the TANF educational provisions, the status of TANF program expenditures, and TANF pilot projects. During the 2003-05 biennium, the TANF program has been repeatedly temporarily extended by Congress pursuant to a continuing resolution.

The committee learned the Department of Human Services changed its TANF education policy in 2003 in anticipation of federal changes to the program. All three versions of the TANF reauthorization being considered by Congress limit educational opportunities. The change being considered allows only 4 months of education to qualify as work participation rather than 12 months under the current program. The department had been approving education activities for a full year; however, because the department anticipated TANF would be reauthorized in 2003, the department did not approve TANF recipients for a full year of education with the expectation that it would have to rescind the approval because of new TANF provisions. Instead, the department adopted a policy on educational limitations which is common to all three versions of the reauthorization. Although reauthorization has been delayed, the department does not believe more flexibility will be provided for TANF education. Current department policies are consistent with what the department anticipates will be the final rules for education under the reauthorized TANF program. The department has been flexible in applying the education rules for Job Corps and vocational rehabilitation clients who have been allowed to continue their education; however, the department will not be able to continue this practice under reauthorization unless changes are made in the federal legislation.

Through June 2004 the department has spent $13 million for TANF benefits, which is $1.6 million less than anticipated expenditures of $14.6 million. Actual expenditures were less than estimated due to the number of TANF cases being an average of 88 per month fewer than estimated and average monthly payments averaging from $13 to $52 per month per case less than estimated.

The committee received information on the Cass County TANF pilot project. The Cass County pilot project included five major components--employment, education, mental health, case management, and sanctions. The focus of the Cass County pilot project is on employment and self-sufficiency. Each client has a support team consisting of staff from Job Service North Dakota, the human service center, and county social services to address specific areas of the plan. The committee learned that the pilot project has resulted in positive outcomes for the clients involved.

The committee received information on the Williams County TANF pilot project. The primary goal of the project is to help clients achieve self-sufficiency, allowing them to exit the program as soon as possible. The pilot project addresses employment, education, sanctions, case management, and mental health. The pilot project utilizes a mentor who works closely with the TANF client to eliminate any barriers to obtaining self-sufficiency.

The committee learned many positive outcomes have resulted from the pilot project.

Administration of Children's Health Insurance Program

The committee received information on the administrative functions and administrative costs of the children's health insurance program. Federal law limits the amount states can claim for administrative costs for the children's health insurance program to no more than 10 percent of the cost of providing medical services to eligible children for each federal fiscal year of operation. For the 2003 federal fiscal year, the administrative expenditure limit was $719,141 and the department spent $79,677 for administrative expenses during that year.

The committee reviewed the positive and negative effects of transferring the eligibility determination function from the state to the counties. A positive effect would be the eligibility process would be more seamless since the counties already determine eligibility for the Medicaid program. A negative effect would be that many more people would be involved in the eligibility determination process across the state.

Child Support Enforcement

The committee received information on the administrative functions and costs of child support enforcement programs.

Child Support Enforcement Organizational Structure

The committee learned a number of entities are involved in the administration of child support in North Dakota, including the Department of Human Services, regional child support enforcement units, county social services boards, and the courts. Three regional child support enforcement units in the state are under the authority of state's attorney's offices, four units are under the authority of county social services boards, and one unit's director reports to the county social services board while the staff reports to the state's attorney's office.

The Department of Human Services was appropriated $6.8 million, of which $400,000 is from the general fund, for the 2003-05 biennium for its child support program. These amounts exclude child support collections paid to families and $1.8 million of federal incentive payments to counties. The department is authorized 38 FTE positions for child support enforcement. In addition, $1.4 million is funded in the Information Technology Division of the Department of Human Services for computer system costs of the regional child support enforcement units.

Regional child support enforcement units employ approximately 120 employees and the units spent approximately $5 million in calendar year 2003, approximately $900,000 of which is from federal child support incentive funds and the remainder is from property taxes. Costs for each regional child support enforcement unit are allocated to individual counties based on a formula developed by the counties of each region.

The committee reviewed other states' child support enforcement systems. Information was provided on the child support enforcement systems in Iowa, Maine, and South Dakota as those states are similar in size to North Dakota and have consistent, high-performance child support enforcement records. In overall rankings for child support enforcement programs, South Dakota is ranked first, North Dakota third, Iowa seventh, and Maine 13th.

The committee reviewed organizational charts for the three states' child support delivery systems and a comparison of a number of components of each system's structure, including outlying offices, caseloads, staffing, customer service, paternity establishment, review and adjustment, enforcement, funding, and performance measures. While North Dakota has a state-supervised and county-operated program, Iowa, Maine, and South Dakota each have a state-administered child support enforcement program.

The Department of Human Services supports changing the structure of the North Dakota child support enforcement program to provide for state administration and suggested this could be accomplished by:

1. Removing county responsibility for the program effective January 1, 2006.
2. Retaining offices in the cities where they are now located.
3. Authorizing the transfer of the regional child support enforcement unit staff to the Department of Human Services.
4. Maintaining budgeted 2004 county funding contributions in the future.
5. Authorizing a continuing appropriation for funding from the tribes if the tribes choose to apply for available child support enforcement federal funding.

Lake Region Child Support Enforcement Unit

The committee learned the 58th Legislative Assembly (2003) provided $215,000 of general fund support for the Lake Region Child Support Enforcement Unit. A section was included in Senate Bill No. 2012 providing that the 59th Legislative Assembly (2005) consider removing the general fund support if the unit's performance does not improve during the 2003-05 biennium. The committee received information on the status of the unit's performance and the Department of Human Services plan for addressing this issue in its 2005-07 budget request. The committee learned that in federal fiscal year 2002, the performance of the unit was eighth among the eight regions in the state and although it did show some performance improvement, it continued in eighth place in federal fiscal year 2003. The committee learned the Department of Human Services is planning to include the $215,000 of general fund support for the unit in its 2005-07 budget request.

The Lake Region Child Support Enforcement Unit area includes seven counties and two Indian

reservations. Because of the high unemployment rate on the Indian reservations, many noncustodial parents living in these areas are unemployed; therefore, it is difficult for the unit to collect the related child support payments.

Representatives of the Lake Region Child Support Enforcement Unit testified on the importance of continuing the $215,000 general fund appropriation for the unit due to lack of available county funding in the region. The committee was informed that Benson and Rolette Counties have lost taxable land due to flooding and as a result of tribal governments purchasing land.

The committee heard testimony that an income-withholding order can be issued from a state district court but may not result in any support collections when the employer of the noncustodial parent is a tribal entity and will not honor income-withholding orders issued in state district courts. The committee learned state district courts lack jurisdiction on Indian reservations. Thirty-four percent of the Lake Region Child Support Enforcement Unit's cases are in "lack of jurisdiction," meaning the noncustodial parents are living on an Indian reservation. In 80 percent of the unit's cases, one of the parents is Native American.

The committee reviewed the performance of the Lake Region Child Support Enforcement Unit and learned even if the "lack of jurisdiction" cases are removed, the unit's performance is still ranked eighth in the state.

The committee reviewed issues relating to the recognition of child support enforcement orders on Indian reservations and found:

- Tribal entities will honor income-withholding orders if issued from a tribal court,
- The tribes have informed the child support enforcement unit that attorneys for the unit may pursue cases in tribal court if the attorneys are licensed by the tribal court,
- The unit has attempted to license its attorneys in tribal court but have not received clear direction from the tribes on the process involved, and
- Many regional child support enforcement offices no longer attempt to file state court orders in tribal courts due to past failed experiences and the time involved in traveling to the tribal courts for a hearing.

State Jurisdiction on Indian Reservations

The committee reviewed state jurisdiction on Indian reservations. Congress enacted Public Law 280 in 1953, which gave six "mandatory" states civil and criminal jurisdiction over all or part of Indian country within those states. Public Law 280 also authorized another group of states, which included North Dakota, to voluntarily opt to assume criminal and civil jurisdiction over Indian country. The second group of eight states was empowered to assume such jurisdiction by amending their state constitutions and state statutes. In 1963 the North Dakota Legislative Assembly passed legislation (NDCC Chapter 27-19) requiring tribal acceptance of jurisdiction before the state can assume jurisdiction in certain matters. Under this law, determining the parentage of children, termination of parental rights, commitments by district courts, guardianship, marriage contracts, obligations of support of spouse, children, or other dependents are examples of the types of cases which the state courts could decide if the tribes agreed. In addition to the statutory provision regarding the consent of tribes before the state can assume jurisdiction, in 1968 Congress enacted similar provisions to limit the further extension of Public Law 280. The 1968 provisions require tribal consent, by majority vote of the adult members, before any of the option states could assume jurisdiction over any areas of Indian country. Since the enactment of this amendment, no tribe has voted to consent to state court jurisdiction. In addition, Public Law 280 was amended to provide that states that had previously opted to exercise jurisdiction over Indian country could retrocede or disclaim such jurisdiction subject to acceptance by the federal government.

Considerations and Options

The committee learned the federal government has made federal funding available to Indian tribes for developing their child support programs. The federal regulations require Indian tribes to accept child support-withholding orders from other jurisdictions in order to be eligible to receive the federal funds. Currently the Sisseton-Wahpeton Reservation has established its own child support program.

Representatives of Ramsey County provided testimony suggesting a committee should be established to review the child support collection process in the state and the committee include representatives of state agencies, regional child support enforcement units, counties, legislative branch, judicial branch, and Indian tribes.

The Supreme Court's Committee on Tribal and State Court Affairs includes representatives of both state and tribal courts. The purpose of the committee is to expand tribal and state court judges' knowledge of the respective judicial systems and to identify and discuss issues regarding court practices, procedures, and administration which are of common concern to members of tribal and state judicial systems. Procedures are to be in place in tribal courts relating to recognizing state court orders. Procedurally, a petitioning process to the court is required, a hearing held, and then, if appropriate, the order will be issued.

The committee considered a bill draft amending NDCC Section 54-58-03 to require the Governor to receive legislative approval before entering, renewing, amending, or extending any tribal-state gaming compacts and the committee:

- Reviewed potential constitutional concerns with the bill draft and learned that constitutionality would be determined by the interpretation of the court; however, there have been cases in other states in which a state law was found to be unconstitutional when the state legislature was not involved in approving tribal-state gaming compacts.
- Learned that under the bill draft, a tribal-state gaming compact negotiated by the Governor would not go into effect until approved by the Legislative

Assembly during either a regular or special session. Federal law requires states to negotiate in good faith with the Indian tribes and if it is determined that a state is not negotiating in good faith, the federal Department of Interior may approve gaming compacts in that state.

- Received information on the approval process for Indian tribes relating to tribal-state gaming compacts. Each of the five Indian tribes has a negotiating team and the chairman of each team negotiates on behalf of each tribe.
- Learned the current compact was negotiated in 1999 and is effective for 10 years with a possible five-year extension.
- Received testimony from representatives of the North Dakota Indian Gaming Commission indicating the bill draft is not necessary because in past negotiations, legislative input has been provided.

Committee member comments on the bill draft included:

1. It is important for the Legislative Assembly to be involved in determining provisions of gaming compacts because the Legislative Assembly is the policymaking branch of government and should have a role in the gaming compact process.
2. Provisions in the bill draft are necessary to maintain the balance of power between the executive and legislative branches.
3. The time is appropriate for the Legislative Assembly to consider making this change because there is no urgent issue that could influence the basic decision of legislative involvement in the tribal-state gaming compacts.
4. The majority and minority leaders from both houses were involved in previous negotiations.
5. The purpose of the bill draft is to increase communications between state agencies, the Governor, Indian tribes, and members of the Legislative Assembly, and to enhance the understanding of tribal-state gaming compacts.
6. Involvement of so many people in the gaming compact approval process could result in delays.
7. The Indian gaming industry in North Dakota could be negatively impacted by the process.

The committee discussed the child support enforcement issue and received testimony from other interested persons and makes the following observations:

1. The location of Indian reservations within a regional child support unit's area results in a larger caseload for the unit.
2. Because the counties are required to provide social services to persons on an Indian reservation, while the reservation does not contribute to the county's tax base, an unfair tax burden is placed on other taxpayers.
3. The funding of social services for persons on reservations should be the responsibility of the state or federal government, not the county.
4. The state Child Support Enforcement Division should enter into a cooperative agreement with the tribes to address the jurisdictional issues with the reservations.
5. Discussions between state and tribal leaders need to occur to improve the child support collection process.
6. The lack of child support collections on Indian reservations is an enforcement problem.
7. When child support is not collected, limited state funding available for other children and families in need is further reduced.
8. Improvements can be made on jurisdictional issues with Indian reservations by increasing the level of communication between the entities involved.

Other Reports

The committee received other reports, including a report comparing the number of Medicaid-eligible persons and the number of Medicaid-eligible persons actually receiving services during each of the last five fiscal years. The number of Medicaid-eligible individuals has increased from 41,953 in fiscal year 1999 to 53,134 in fiscal year 2003.

Recommendations

The committee recommends House Concurrent Resolution No. 3001 to provide for a Legislative Council study of the legal and enforcement issues relating to child support collections on Indian reservations, including issues relating to state and tribal jurisdictions, recognition of income-withholding orders, and logistics involved in transferring funds collected to custodial parents.

The committee recommends Senate Bill No. 2025 to require the Governor to obtain legislative approval before entering, renewing, amending, or extending any tribal-state gaming compact.

DEVELOPMENTAL DISABILITIES SERVICES PAYMENT SYSTEM

Senate Bill No. 2086 provided that the Department of Human Services report to the Legislative Council during the 2003-04 interim regarding its progress in developing a fee-for-service payment system for treatment or care centers and by October 1, 2004, the department is to certify to the Legislative Council whether the department and developmental disabilities services providers have reached an agreement on a new fee-for-service payment system.

Background

The 57th Legislative Assembly (2001) approved Senate Bill No. 2307, which provided that the Department of Human Services, in cooperation with developmental disabilities services providers, prepare a joint

recommendation for consideration by the 58th Legislative Assembly regarding a new statewide developmental disabilities services provider reimbursement system. The 2001-02 interim Budget Committee on Human Services received quarterly reports from the Department of Human Services regarding the progress of the workgroup organized to develop the recommendation. The 2001-02 workgroup consisted of representatives of the Department of Human Services, developmental disabilities services providers, and legislators. Although a consensus of all developmental disabilities services providers was not reached, a strong majority expressed support that the department, in cooperation with the developmental disabilities services industry, develop 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 have been based on allowable costs and would have been provider-specific. A prospective system establishes the reimbursement rate prior to the provision of services. Each provider's rate is unique based on each provider's historic costs. The initial rate is adjusted each year by inflationary increases until periodically rebased as determined by the Legislative Assembly. The targeted implementation date of the new payment system was to be July 1, 2005, and the payment system was to be budget-neutral as compared to the current system.

The Department of Human Services introduced 2003 Senate Bill No. 2086 to implement a fee-for-service ratesetting system effective July 1, 2005. As passed by the 58th Legislative Assembly, the bill created a workgroup consisting of one voting member appointed by the Governor, three voting members from the Department of Human Services, and three voting members from the North Dakota Association of Community Facilities. The bill:

1. Provided that the department implement a fee-for-service payment system by July 1, 2005. The fee-for-service payment system must require each developmental disabilities services provider to be responsible for its own operating costs and that the fee paid represents payment in full for the services provided.
2. Established a trust fund with up to two-tenths of 1 percent of the general fund appropriation provided for developmental disabilities grants for the 2005-07 biennium to be used for:
   a. Reasonably unforeseeable costs experienced by developmental disabilities providers.
   b. One-time improvements needed to comply with the Life Safety Code.
   c. Additional costs associated with providing services to individuals with extraordinary needs.
3. Required the department to report to an interim Legislative Council committee regarding its progress in developing a fee-for-service payment system and to certify to the Legislative Council by October 1, 2004, whether the department and developmental disabilities providers reached an agreement on the new payment system.

The committee learned that the 58th Legislative Assembly appropriated a total of $190.6 million for developmental disabilities services grants for the 2003-05 biennium, of which $61.9 million is from the general fund and $128.7 million is from federal funds. In total, the funding provided for developmental disabilities services grants is an increase of $17.1 million compared to the 2001-03 biennium appropriation of $164.2 million. The Legislative Assembly provided funding for increasing the average wage for employees of developmental disabilities services providers by 87 cents per hour and for increasing the allowable fringe benefits percentage from 30 to 33 percent of salary.

The 2003-05 biennium budget anticipates serving an average of 2,189 developmental disabilities clients in day and residential services for each year of the 2003-05 biennium and 1,337 clients in family support programs for each year of the 2003-05 biennium. The Department of Human Services contracts with private providers for many developmental disabilities services, including residential, family support, day support, extended employment, and infant development.

Workgroup Recommendations

The committee learned a workgroup was formed, as required by Senate Bill No. 2086, consisting of three representatives of developmental disabilities services providers, three representatives of the Department of Human Services, and one member appointed by the Governor.

The committee received reports from the workgroup. The committee learned the workgroup did not recommend changing from a retrospective payment system to a prospective or "fee-for-service" payment system but did recommend:

1. Allowable and nonallowable costs for developmental disabilities services providers contained in North Dakota Administrative Code Chapter 75-04-05 be changed. The changes are budget-neutral and have been submitted to the Department of Human Services for consideration and final approval by the Administrative Rules Committee.
2. Additional funding for individualized supported living arrangements be provided. Members of the workgroup representing the Department of Human Services abstained from voting on this recommendation because it is not budget-neutral.
3. The final ratesetting process be completed within a two-year cycle. This recommendation will result in each provider's budget being based on an audited fiscal year that ended two years previously.
4. The provider penalty for filing a late cost report be reduced from 10 to 1 percent and the Department of Human Services be encouraged to strictly enforce the penalty provision.

5. The concept of the money following the client be expanded within the Department of Human Services budget when individuals are moved from the Developmental Center to community settings.
6. Regular meetings of representatives of the Department of Human Services, Governor's office, and developmental disabilities services providers be continued to discuss reimbursement issues and other issues that arise.

Committee Recommendations

The committee received the workgroup's report but did not make any recommendations.

CHILDREN'S SERVICES COORDINATING COMMITTEE REPORTS

Section 5 of 2003 House Bill No. 1014 provided that the Children's Services Coordinating Committee report to an interim Legislative Council committee at least twice during the 2003-04 interim on the amount of "refinancing" funds generated and the uses of the funds for the 2003-05 biennium.

2003 Legislative Assembly Action

The 2003 Legislative Assembly appropriated $2,794,000 of funds generated by "refinancing." The schedule below lists the estimated amounts allocated for various purposes:

	Estimated Amount
Department of Human Services	$279,400
Children's Services Coordinating Committee - Administration	139,700
Grants to regional and tribal committees for collaboration and administration	977,900
Grants to participating entities	1,397,000
Total	$2,794,000

"Refinancing" is a system administered through the Department of Human Services allowing federal reimbursement of eligible administrative costs of local schools, juvenile courts, and public health organizations to be claimed under the federal IV-E foster care and Medicaid programs. The local organizations participating in the system complete time studies to document the amount of time spent with children eligible for the federal reimbursement. These time studies are submitted to the relevant regional or tribal children's services coordinating committee, reviewed by the state Children's Services Coordinating Committee, and submitted for federal administrative cost reimbursement by the Department of Human Services. The federal reimbursements are received by the Department of Human Services. The department retains its percentage allocation (10 percent) and transfers the remaining funds to the state Children's Services Coordinating Committee, which retains its percentage (5 percent) and distributes the remaining funds to the children's services coordinating committee of the region or tribe that generated the funds. Each regional or tribal committee distributes the percentage allocation of funds to each of the organizations that generated the federal reimbursements (50 percent) and uses the remaining funds (35 percent) for its administrative and operating costs and for other purposes based on the allocations approved by the Legislative Assembly. The percentage allocations of these funds for the 2003-05 biennium compared to the 2001-03 biennium are listed below:

	2001-03 Biennium	2003-05 Biennium
Department of Human Services	10.0%	10.0%
Children's Services Coordinating Committee - Administration	1.7%	5.0%
Children's Services Coordinating Committee - Grants		
Participating entities generating federal funds	20.0%	50.0%
Statewide grants	10.2%	0.0%
Regional and tribal children's services coordinating committees for administrative costs	16.2%	0.0%
Regional and tribal children's services coordinating committees for collaboration efforts	1.8%	0.0%
Regional and tribal children's services coordinating committees for administrative costs and collaboration efforts	0.0%	35.0%
Regional and tribal children's services coordinating committees for grants to providers	40.1%	0.0%
Total	100.0%	100.0%

The estimated funding to be available from "refinancing" for the 2003-05 biennium compared to the 2001-03 biennium is substantially reduced due to a federal policy change relating to the allowable uses of federal IV-E foster care funds. The change became effective on July 1, 2002, and allows federal IV-E foster care funding to be claimed only if the child being served is in foster care or is a "candidate" for foster care. Previously, these funds could be claimed for a child in foster care or for a child who was "at risk" of being placed in foster care. The 57th Legislative Assembly anticipated "refinancing" would generate $8.3 million for the 2001-03 biennium while the 58th Legislative Assembly anticipated "refinancing" to generate only $2.8 million for the 2003-05 biennium.

2003-05 "Refinancing" Funds Status

The committee received information on the status of "refinancing" funds generated and the uses of the funds for the 2003-05 biennium to date. Through June 30, 2004, the Children's Services Coordinating Committee generated $1,281,201 from "refinancing" activities. Of this amount, $128,120 was distributed to the Department of Human Services, $64,060 to the Children's Services Coordinating Committee, $640,601 to participating agencies, and $448,420 to local children's services coordinating committees.

During the first year of the biennium, the local children's services coordinating committees spent $1,048,187, of which $606,381 were grants and $441,806 were for operating expenses of the committees. Of the $441,806 spent on operating expenses, $71,847, or 16 percent, related to grants administration; $48,541, or 11 percent, related to "refinancing" administration; $112,806, or 26 percent, related to board or committee administrative costs; and $208,612, or 47 percent, related to collaboration leadership. The total amount spent by the local children's services coordinating committees exceeded the amounts generated due to the timelag between when the funds are generated and received.

Discontinuation of "Refinancing"

The committee learned a federal departmental appeals board decision involving the State of Missouri and its use of federal IV-E foster care dollars has resulted in a substantial negative effect on North Dakota's ability to claim federal IV-E dollars under the "refinancing" system. The appeals board decision results in a negative effect to North Dakota because the appeals board concluded that agencies claiming federal IV-E dollars need to be supervised by the Department of Human Services or be involved in the placement and care of children.

Under North Dakota's "refinancing" system, agencies, including juvenile courts, schools, and public health units, claim administrative reimbursement under the federal IV-E program but are not supervised by the Department of Human Services nor are they responsible for the placement and care of children; therefore, based on the appeals board decision, the Department of Human Services believes the activities of these agencies are nonreimbursable under federal IV-E foster care. As a result, the Department of Human Services discontinued the "refinancing" initiative with the Children's Services Coordinating Committee effective June 30, 2004.

The committee learned that the Children's Services Coordinating Committee hopes to continue to meet quarterly; however, the state office will be closing at a yet-to-be-determined date. The Department of Human Services and the Department of Corrections and Rehabilitation will provide the necessary support services to maintain the committee.

The Children's Services Coordinating Committee plans to introduce a bill in the 59th Legislative Assembly to continue the state committee and local committees without state funding.

The future plans for the regional children's services coordinating committees are:

- Region I, Williston - Will continue operating through June 30, 2005.
- Region II, Minot - Will continue operating through June 30, 2005; however, if no other funding is identified, its operations will end. The committee will continue to meet quarterly.
- Region III, Devils Lake - The committee will continue to operate through June 30, 2005; however, staff support will end as of October 2004.
- Region IV, Grand Forks - Has discussed continuing as a regional board beyond July 1, 2005; however, staff time will be reduced significantly and eventually eliminated due to loss of funding.
- Region V, Fargo - Plans to continue its current structure and staff.
- Region VI, Jamestown - Will continue to operate with present staff while funds are available and may consider operating after funds are depleted.
- Region VII, Bismarck - Seeking other grants; however, if none are received, the office will close by June 30, 2005.
- Region VIII, Dickinson - Will retain a .4 FTE staff person for at least one year to continue coordination and collaboration of services.
- Tribal children's services coordinating committees - The state committee is unaware of any tribal committees that are still operating.

The committee received other testimony regarding the negative effect the loss of "refinancing" funds will have on the provision of children's services across the state.

Recommendations

The committee received the reports of the Children's Services Coordinating Committee but did not make any recommendations.

BUDGET TOURS

During the interim, the Budget Committee on Human Services functioned as a budget tour group of the Budget Section and visited the West Central Human Service Center, Lake Region Human Service Center, North Central Human Service Center, School for the Deaf, and State Fair. The committee also heard budget reports from the Badlands Human Service Center, South Central Human Service Center, and Northwest Human Service Center.

The committee learned about facility programs, major improvement needs, and problems the institutions and 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 2005 legislative session.

COMMERCE COMMITTEE

The Commerce Committee was assigned three studies. House Concurrent Resolution No. 3060 directed a study of the state's unemployment compensation system, including reserve guidelines for the unemployment trust fund, the system for ratesetting, treatment of positive balance and negative balance employers, and the feasibility and desirability of creating an unemployment compensation board. Section 5 of House Bill No. 1017 directed a study of the impact of pending federal legislation that would significantly change the respective federal-state responsibilities and funding for workforce development, workforce training, public labor exchange, and unemployment insurance programs. Section 5 of Senate Bill No. 2252 directed a study of consumer protection in regard to contractor competency and out-of-state contractors licensed in the state.

The Legislative Council also assigned the committee the responsibility to receive a report from the State Board of Agricultural Research and Education on its annual evaluation of research activities and expenditures under North Dakota Century Code (NDCC) Section 4-05.1-19 and a report regarding the safety and performance audit of the Roughrider Industries work programs as provided under NDCC Section 65-06.2-09. The Legislative Council Chairman assigned the committee the responsibility to receive a report regarding the 2004 rate increase proposed by Workforce Safety and Insurance and projections for future rate adjustments.

Committee members were Representatives George Keiser (Chairman), Donald L. Clark, Mark A. Dosch, Mary Ekstrom, Pat Galvin, Eliot Glassheim, Ron Iverson, Kim Koppelman, Mary K. Nester, Jo Ann Rodenbiker, Dan J. Ruby, and Arlo E. Schmidt and Senators Dick Dever, April Fairfield, Tim Flakoll, and Karen K. Krebsbach. Representative Dale C. Severson was a member of the committee until his death on November 4, 2003.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2004. The Council accepted the report for submission to the 59th Legislative Assembly.

UNEMPLOYMENT COMPENSATION SYSTEM STUDY

Background

Job Service North Dakota

The federal Social Security Act of 1935 included provisions for the creation of a program for the payment of benefits to unemployed individuals. Under federal law, payments are made to states with approved unemployment compensation laws under which the state administers an unemployment compensation program through public employment offices. The state program administration must conform with rules established by the federal government. The state of North Dakota has provided unemployment insurance to its residents since 1937 through the state and federal partnership. Job Service North Dakota is responsible for administering the unemployment program in this state.

Job Service North Dakota is required by law to appoint a State Advisory Council. In addition, Job Service may appoint local advisory councils. The advisory councils must be composed of an equal number of employer representatives and employee representatives and members representing the general public. The purpose of the councils is to aid Job Service in formulating policies, in discussing problems related to the administration of Job Service, and in assuring impartiality and freedom from political influence in the solution of the problems.

Unemployment Compensation Fund

Job Service North Dakota administers an unemployment compensation fund consisting of:

1. All contributions collected under the North Dakota Unemployment Compensation Law.
2. All fines collected pursuant to the provisions of the North Dakota Unemployment Compensation Law.
3. Interest earned upon any money in the fund.
4. Any property or securities acquired through the use of money belonging to the fund.
5. All earnings of the property or securities.
6. All money recovered on losses sustained by the fund.
7. All money received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the Social Security Act.
8. All money credited to this state's account in the unemployment trust fund pursuant to Section 903 of the Social Security Act.
9. All money received from the federal government as reimbursements pursuant to Section 204 of the Federal-State Extended Compensation Act of 1970.
10. All money received for the fund from any other source.

Job Service North Dakota is required to maintain a clearing account, the unemployment trust fund account, and a benefit account within the unemployment compensation fund. After clearance of all funds, the funds must be deposited in the United States Treasury to the credit of the state in the unemployment trust fund. The benefit account consists of all money requisitioned from the state's account in the unemployment trust fund to be used for the payment of benefits. Any money credited to the account of the state in the unemployment trust fund may be used for administration of the unemployment compensation program.

In 2001 the Legislative Assembly adopted legislation to require Job Service North Dakota to report to the Legislative Council before March 1 of each year the actual trust fund balance and the targeted modified average high-cost multiplier, as of December 1 of the

previous year. In addition, the report must include a projected trust fund balance for the next three years.

Contributions and Ratesetting

North Dakota Century Code Chapter 52-04 addresses contributions required of employers under the North Dakota Unemployment Compensation Law and the determination of contribution rates. Contributions accrue and become payable by each employer with respect to wages paid for employment.

Statutory provisions for the determination of rates were amended significantly in 1999 in an attempt to raise the unemployment trust fund balance. House Bill No. 1135 (1999) provided a seven-year timeframe 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.

Section 52-04-05 establishes the formula for determining the trust fund reserve target. That section provides, in part:

> The solvency target is an average high-cost multiple of one. The average high-cost multiple is the number of years the bureau [Job Service North Dakota] could pay unemployment compensation, based on the reserve ratio, if the bureau paid the compensation at a rate equivalent to the average benefit cost rate in the one calendar year during the preceding twenty calendar years and the two calendar years during the preceding ten calendar years in which the benefit cost rates were the highest. "Reserve ratio" means the ratio determined by dividing the balance in the trust fund reserve at the end of the calendar year by the total covered wages in the state for that year. "Benefit cost rate" means the rate determined by dividing the unemployment compensation benefits paid during a calendar year by the total covered wages in the state for that year. The computation of the reserve ratio and benefit cost rate must exclude the wages and unemployment compensation paid by employers covered under section 3309 of the Internal Revenue Code of 1986, as amended [26 U.S.C. 3309]. The trust fund reserve target will be achieved over a seven-year period from January 1, 2000. Progress toward achieving the targeted amount of the trust fund reserve is measured by reducing any difference between one and the average high-cost multiple of the state by an amount that is at least equal to the ratio of the number of years left to reach the targeted amount of the trust fund reserve to the difference between the trust fund reserve and the targeted amount. If the calendar year annual average insured unemployment rate is above three percent and has increased one hundred ten percent of the average of the preceding two calendar years, a tax rate will be set to provide for fifty percent of the additional revenue needed for the trust fund to be derived from tax rate increases and the remaining fifty percent becomes a drawdown against the trust fund reserve. In setting tax rates, the amount of the trust fund reserve may not be allowed to fall below three hundred percent from a standard margin of error for the targeted amount of the trust fund reserve.

The executive director of Job Service North Dakota may make reasonable adjustments to the tax rates set for a calendar year to prevent significant rate variations between calendar years. When the trust fund reserve is being rebuilt, rates may not be lowered until the target level is reached. If, while achieving the trust fund reserve target, the trigger of above 3 percent insured unemployment rate and an increase of more than 110 percent of the average of the two preceding years has been in effect for two or more consecutive years, the period of time to achieve the trust fund reserve target is extended to seven years from the end date of the last year in which the trigger was in effect. If this trigger has been in effect for one year, the amount of tax increase toward achieving the targeted amount of the trust fund reserve must be determined using the number of years remaining of the seven-year period, excluding the year the trigger is in effect.

Sections 52-04-05 and 52-04-06, which were amended in 1999 and 2001, set forth the variables used in determining rates. Under Section 52-04-05, rates must be determined as follows:

1. The income required for the calendar year must be divided by the estimated taxable wages for the calendar year. The result rounded to the next higher one one-hundredth of 1 percent is the average required rate.
2. If the positive employer maximum rate is at least 1 percent, the positive employer minimum rate is the positive employer maximum rate minus nine-tenths of 1 percent. If the positive employer maximum rate is less than 1 percent, the range for the positive employer minimum rate must be at least one-tenth of 1 percent and must be less than two-tenths of 1 percent (the minimum of one-tenth of 1 percent plus the increment of one-tenth of 1 percent), with the positive employer minimum rate equal to the positive employer maximum rate minus a multiple of the increment one-tenth of 1 percent as provided in Section 52-04-06(2) to fall within the range described above. Within the table of rate schedules for each calendar year, a rate schedule may not be used if it would generate less income than any rate schedule preceding it on the table of rate schedules. The negative employer minimum rate is the positive employer maximum rate plus 5.1 percent.
3. The positive employer maximum rate must be set so that all the rates combined generate the average required rate. The negative employer maximum rate is the negative employer

minimum rate plus 3.6 percent. However, the maximum rate must be at least 5.4 percent.

Section 52-04-05 further provides that unless otherwise provided, an employer's rate may not be less than the negative employer minimum rate for a calendar year unless the employer's account has been chargeable with benefits throughout the 36-consecutive-calendar-month period ending on September 30 of the preceding calendar year. In addition, if an employer in construction services has not been subject to the law as required, that employer qualifies for a reduced rate if the account has been chargeable with benefits throughout the 24-consecutive-calendar-month period ending September 30 of the preceding calendar year. If an employer in nonconstruction services has not been subject to the law as required, the employer in nonconstruction services qualifies for a reduced rate if the account has been chargeable with benefits throughout the 12-consecutive-calendar-month period ending September 30 of the preceding calendar year.

Section 52-04-05 also placed a limit on the increase of rates for calendar years 2000, 2001, and 2002. During the building of the trust fund reserve, the rate assigned to an employer may not exceed 130 percent of the previous year's rate for that employer and an employer may not receive more than a 10 percent decrease in that employer's rate from the previous year's rate for calendar years 2000, 2001, and 2002. However, the rate limitation provision for calendar years 2000, 2001, and 2002 did not apply to an experience-rated employer that was a new employer the previous year, a negative employer that was a positive employer the previous year, a positive employer that was a negative employer the previous year, an employer that failed to file a report, a new employer, and an employer that chose to make payments in lieu of contributions. With respect to a new employer, Section 52-04-05 provides that for each calendar year, the new employer must be assigned a rate that is 150 percent of the positive employer maximum rate or a rate of 1 percent, whichever is greater, unless the employer is classified in construction services. However, an employer must be assigned within the negative employer rate ranges for any year if, as of the computation date, the cumulative benefits charged to that employer's account equal or exceed the cumulative contributions paid on or before October 31 with respect to wages paid by that employer before October 1 of that year. A new employer in construction services must be assigned the negative employer maximum rate.

The executive director of Job Service North Dakota is authorized to provide any negative employer whose contributions paid into the trust fund are greater than the benefit charges against that employer's account, for a minimum of three consecutive years immediately preceding the computation date or subject to the law as required, with up to a 30 percent reduction to that employer's rate for any year if that employer has in place a plan approved by Job Service which addresses substantive changes to that employer's business operation and ensures that any rate reduction provided will not put the employer's account back into a negative status.

Section 52-04-06 addresses the determination of rate groups. That section provides that an employer's reserve ratio is the difference between the six-year contributions paid by that employer on or before October 31 of any year, with respect to wages paid by that employer before October 1 of that same year, and the six-year benefits charged to that employer's account before October 1 of that year, divided by the average annual payroll. Job Service North Dakota is required to assign an employer whose cumulative contributions exceed cumulative benefits within the positive employer rate groups. An employer whose cumulative contributions are equal to or less than cumulative benefits must be assigned within the negative employer rate groups.

Job Service North Dakota is required to establish, for each calendar year, a schedule of positive employer rate groups within the positive employer minimum rate and the positive employer maximum rate. Each successive rate group for positive employer rate groups must be assigned a rate equal to the previous group's rate plus one-tenth of 1 percent. The number of rate groups in the positive employer schedule must be the number required to provide for a rate group at each one-tenth of 1 percent interval between the positive employer minimum rate and the positive employer maximum rate. In addition, for each calendar year, Job Service is required to establish a schedule of negative employer rate groups with the negative employer minimum rate and the negative employer maximum rate. Each successive rate group for negative employer rate groups must be assigned a rate equal to the previous group's rate plus four-tenths of 1 percent. The number of rate groups in the negative employer schedule must be the number required to provide for a rate group at each four-tenths of 1 percent interval between the negative employer minimum rate and the negative employer maximum rate.

Job Service North Dakota is required to assign positive employers to the rate in the positive employer rate schedule in the rank order of their reserve ratios with the highest reserve ratio positive employers assigned to the first positive employer rate. Job Service is also required to assign each successively ranked positive employer to a rate within the positive employer rate schedule so that each rate within the rate schedule is assigned the same proportion of the positive employer's prior year's taxable wages. Job Service is required to make similar assignment requirements for negative employers.

Testimony and Committee Considerations

Ratesetting

The committee received testimony from representatives of Job Service North Dakota regarding the 1999 legislation that was intended to stabilize the average unemployment insurance tax rate, shift part of the burden from positive balance employers to negative balance employers, and raise the unemployment trust fund balance to a solvency target over a seven-year

period. Before that legislation, unemployment tax rates had been very volatile, and tax revenue to the fund was less than benefit payouts since 1994. When the rate limiters contained in the 1999 legislation expired in 2002, many employers' tax rates for 2003 increased dramatically. However, testimony indicated that tax rates are expected to remain stable until the trust fund reaches the targeted reserve in 2007.

Positive Balance and Negative Balance Employers

The committee received testimony arguing that positive balance employers are subsidizing negative balance employers who are paying the maximum tax rate, but not assessed full liability. Because of the cap on the maximum tax rate for negative balance employers, the burden of building the reserves in the trust fund falls on the positive balance employers.

Because seasonal job-attached employees are entitled to receive benefits without being required to seek other employment while waiting to be reemployed by the seasonal employer, representatives of positive balance employers contended that negative balance employers use the unemployment insurance system as a means to retain seasonal employees rather than encourage the seasonal employees to seek other employment during the employer's off-season. Conversely, representatives of seasonal employers and seasonal employees argued that the policy of providing unemployment compensation benefits to seasonal employees helps ensure that industries, such as the construction industry, will be able to maintain experienced, well-trained employees rather than lose those employees as they leave the state for jobs in warmer climates.

The committee considered a bill draft that created a proportionately greater responsibility on negative balance employers for that portion of the unemployment insurance tax burden, which represents the amount of revenue necessary to make due progress toward the unemployment insurance reserve fund solvency target. Proponents of the bill draft argued that although positive balance employers still would be subsidizing negative balance employers, the bill draft would shift a small portion of the burden of making progress to the reserve fund solvency target to the negative balance employers.

Job Service Advisory Council

Although state law requires Job Service North Dakota to appoint an advisory council, the committee received testimony indicating the current advisory council is ineffective because the last two Governors have designated the Workforce Development Council as the Job Service Advisory Council. Testimony indicated that the Workforce Development Council has not engaged in any discussion addressing policies and problems related to unemployment compensation.

The committee considered two bill drafts that would have provided for a seven-member advisory council to advise Job Service North Dakota regarding issues relating to the operations, effectiveness, fairness, and efficiency of the unemployment insurance program. One of the bill drafts would have required the executive director of Job Service to appoint the members of the advisory council and the other bill draft would have required the Governor to appoint the members of the advisory council. Committee members generally agreed that members of the advisory council should be appointed by the Governor.

Proponents of the bill draft argued that establishing an advisory council consisting of members who are familiar with and interested in the unemployment compensation system would provide valuable guidance to Job Service North Dakota and would provide employers and employees an opportunity to have input in decisions made by Job Service. Opponents of the bill draft contended that the advisory council required under current law could be effective if the members appointed to the council were truly interested in improving the unemployment compensation system. In addition, opponents of the bill draft argued that the bill draft provided for a disproportionate number of employers on the council membership. Conversely, others argued that the membership of the council should be expanded beyond seven members to include additional employer members representing specific industries in the state.

Recommendations

The committee recommends House Bill No. 1027 to revise the formula for determining unemployment compensation tax rates so that a proportionately greater responsibility is shifted to negative balance employers for that portion of the unemployment insurance tax burden, which represents the amount of revenue necessary to make due progress toward the unemployment insurance reserve fund solvency target.

The committee recommends House Bill No. 1028 to establish a seven-member Job Service North Dakota Advisory Council, appointed by the Governor, for the purpose of advising Job Service regarding issues relating to the operations, effectiveness, fairness, and efficiency of the unemployment insurance program.

IMPACT OF FEDERAL UNEMPLOYMENT COMPENSATION LEGISLATION STUDY

Background

North Dakota Century Code Section 52-08-01, which was enacted in 1935, provides that the state of North Dakota accepts and will observe federal law regarding the establishment of a national employment system. To carry out its responsibilities, Job Service North Dakota is required by law to establish and maintain free public employment offices where necessary in the state.

Workforce Training and Development Programs

Job Service North Dakota

Job Service North Dakota provides workforce training and development through numerous federal and state programs, including:

- The Workforce Investment Act of 1998, which is the primary federal workforce training program. The purpose of the Act is to increase occupational skill attainment, employment, retention, and

earnings of participants through program activities, such as classroom training, on-the-job training, and work experience. The Workforce Investment Act of 1998 was scheduled to expire on September 30, 2003. Congressional legislation to reauthorize the Act remains in conference committee.

- The job opportunities and basic skills (JOBS) program under which Job Service North Dakota contracts with the Department of Human Services for administration. The program provides basic education and specific job skills training to people eligible for the temporary assistance for needy families (TANF) program.
- The Work Force 2000 program, which is a state-funded job training program designed to assist North Dakota industry and business in retraining and upgrading workers' skills to meet demands brought about by the introduction of new technologies and work methods into the workplace and to provide assistance to companies to help train new employees.
- The trade adjustment assistance program, which is a federal program administered in the state by Job Service North Dakota. The program provides special job training, job search assistance, relocation, and related services to workers who have become unemployed as a result of foreign imports or jobs going to Canada or Mexico, as a result of the North American Free Trade Act.
- The senior community service employment program, which is designed to foster and promote useful part-time employment opportunities in community service activities for unemployed low-income individuals who are 55 years of age and older and who have decreased employment prospects.
- The new jobs training program, which was enacted by the 53rd Legislative Assembly (1993). The program provides a state income tax withholding credit equal to the state income tax withholding projected to be generated from new jobs created. To qualify an employer must either be locating to the state or expanding employment within the state. The eligible employer may access funding by obtaining a grant or loan from a commercial or private lender, city, or local development corporation. The loan or grant covers the costs of workforce training and program administration identified in the project agreement between the employer and Job Service North Dakota. The loan or grant is repaid through state income tax withholding credits generated from the new positions created.

Department of Commerce

The Department of Commerce Division of Workforce Development is responsible for providing administrative support for the North Dakota Workforce Development Council, the North Dakota Youth Development Council, and the State Commission on National and Community Service. The division is also responsible for the development of a public and private partnership for the recruitment of workers.

The purpose of the North Dakota Workforce Development Council is to advise the Governor and the public regarding the nature and extent of workforce development and economic development needs in North Dakota and how to meet those needs effectively while maximizing the efficient use of available resources and avoiding unnecessary duplication of effort. The council is responsible for drafting the state's five-year strategic workforce development plan, assisting the Governor in the development of a statewide workforce investment system carried out through a one-stop delivery system, developing and improving state performance measures that will be used to assess the effectiveness of programs covered by statewide workforce investment activities, developing a statewide employment statistics system, and coordinating workforce development system activities with state and local economic development strategies.

The division administers *northdakotahasjobs.com*, which is a single statewide web site that provides seamless access for employers and jobseekers to a job opening and resume management system to support the recruitment of alumni and workers from out of state. The web site has a student/adult career guidance system, assessment tools, and electronic portfolio integrated into the site to provide employers with opportunities to advertise internship and work-based learning opportunities while giving students a tool to learn about employers that exist in the state and opportunities the employers have available.

In 2003 the Legislative Assembly required the Department of Commerce, in cooperation with Job Service North Dakota, the Department of Human Services, and the North Dakota University System, to include in its annual report to the Legislative Council the number of individuals trained and the number who became employed as a result of each entity's workforce development and training programs, including the state's investment, the areas of occupational training, the average annual salary of those employed, and the average increase in earnings 12 months after completion of training.

The division also provides matching funds to communities that participate in standardized community labor availability studies.

Department of Human Services

The Department of Human Services provides workforce training and development assistance for individuals who are eligible under selected public assistance programs, including:

- The TANF program, which is a federal and state program to provide cash assistance to families in need and to reduce dependency by promoting job preparation and work. Under the program,

individuals may receive basic education and job skills training and work support assistance, such as child care assistance, transportation assistance, and career-related counseling.

- The JOBS program, which is the employment and training component of the North Dakota TANF program under which individuals who are eligible for the TANF program may receive basic education and specific job skills training.
- The child care assistance program, which provides assistance to low-income families to help obtain and pay for the care of dependent children while individuals are at work or in training.

State Board for Career and Technical Education

The State Board for Career and Technical Education administers vocational technical education in the state through programs provided by public school districts, Bureau of Indian Affairs schools, tribally controlled colleges, junior and state colleges, state universities, and other agencies. The mission of the State Board for Career and Technical Education is to work with others to provide all North Dakota citizens with the technical skills, knowledge, and attitudes necessary for successful performance in a globally competitive workplace. The board also distributes grant funds for specialized industry training provided on demand by vocational education centers.

North Dakota University System

The North Dakota University System provides workforce training and development through the institutions' continuing education divisions and the four community colleges that are responsible for coordinating workforce training activities.

The University System appropriation for the 2003-05 biennium included $1,550,000 for centers of excellence. The purpose of the program is to develop and engage strategies for science and technology research and development, commercialization, entrepreneurship, infrastructure, growth and expansion of knowledge-based industries, and activities in the state to develop innovative approaches that expand the gross state product; to assist efforts to attract private and federal assistance for science and technology research and development and for commercialization in growth clusters most likely to increase the gross state product; to increase collaboration among state, federal, and private research and development and technology commercialization organizations in the state; to strengthen the leadership and support of the National Science Foundation experimental program to stimulate competitive research programs and to encourage partnerships with other state institutions for expanded efforts to stimulate economic growth in identified industry clusters; to provide leadership in science and technology policy at a regional, a national, and an international level; and to create employment opportunities for North Dakota University System graduates.

Proposed Federal Legislation

In 2002 the United States Department of Labor sent to Congress the administration's proposal for an overhaul of the unemployment compensation system. Among other things, the proposal would reduce employers' federal unemployment taxes and transfer control of funding for unemployment compensation services and administration to the states. States would be allowed to use existing unemployment tax systems to fund the administration of the programs or create a separate administration tax. The federal government would continue to set standards for coverage and benefits.

Federal grants to states would continue for federal activities such as federal unemployment claims, tax credits, alien labor certification, required reports, and statistical programs. Proposals for reauthorization of the Workforce Investment Act also include provisions for offering personal reemployment accounts to some unemployed individuals.

Testimony and Committee Considerations

The committee received reports from representatives of Job Service North Dakota regarding proposed federal legislation and the potential effect of the legislation on the unemployment compensation system in this state. The reports indicated that although reauthorization of the Workforce Investment Act could provide opportunities for strengthening some of the infrastructure in place for training programs and creating a more responsive, demand-driven system, representatives of Job Service have concerns regarding the effect of proposals to change the cost allocation for operating the one-stop career centers and the administrative and consolidated funding stream. Under the reauthorization proposal, each partner in the one-stop career centers would be required to pay a portion of the cost, which could result in reductions in funding. In addition, reauthorization could result in a loss of funding for youth training programs due to proposals to direct funds to certain impacted local workforce areas. However, proposals for reauthorization could also allow expanded use of individual training accounts.

The committee also was informed of four proposals under consideration by either the United States Congress or the United States Department of Labor which could have a significant impact on the unemployment insurance compensation program in the state. One proposal would devolve the administrative funding responsibility for the program from the federal government to the states by 2009, when the states would be expected to cover the full administrative costs of the unemployment insurance programs without federal support except for a hold harmless provision that would protect states from a too rapid decline in federal administrative grant funding for the first five years of the proposal's full implementation. Although the proposal could be described at the federal level as a reduction of employer taxes, the result is that taxes would have to be increased at the state level to cover the administrative costs. If the federal tax is reduced, the Legislative

Assembly would have to determine if the state should continue to fund the public employment service, reemployment services, and online position advertising and virtual recruitment services.

A second proposal would take the Wagner-Peyser portion of the grants that states receive as a result of the Federal Unemployment Tax Act and consolidate that funding with the Workforce Investment Act adult and dislocated worker funding streams. The testimony indicated that one of the potential impacts of the proposal is that one-stop funding would be focused on low-wage workers when the state needs to attract and serve job seekers from across the income and skills spectrums.

Another proposal under consideration would create personal reemployment accounts for claimants profiled as being likely to exhaust their benefits and who are eligible for 20 weeks or more of benefits. The accounts would be available to the claimants for purchase of workforce training and support services deemed necessary to prepare them for reemployment. The committee was informed that the proposal likely would result in increased workload for Job Service North Dakota.

The fourth proposal involves the United States Department of Labor revising unemployment insurance performance standards by reducing the number of standards and adding a standard that measures the effectiveness of the states' reemployment efforts. The testimony indicated that if the adopted performance standard would require some specific outcome with respect to all unemployment insurance claimants, that standard could not be met unless Job Service North Dakota staff had interface with all unemployment insurance claimants. In addition, there was some concern with timeframes selected with respect to placement and measuring retention.

The committee received testimony from representatives of Job Service North Dakota regarding the need to replace the unemployment insurance computer system because the unemployment tax and benefit processing system is nearing obsolescence. The committee received information indicating that several other states are in the process of replacing unemployment insurance computer systems at costs of up to $65 million. An initial cost estimate for replacing the Job Service system was $18 million to $24 million.

The state received $15.2 million in federal Reed Act funds in 2002 which may be used to address computer system replacement. In addition, there is potential for another Reed Act distribution that could result in another $16 million allocation to North Dakota. The committee was informed that further study of the replacement of the unemployment insurance computer system is necessary and Reed Act funds may be used to conduct a preliminary procurement planning study.

The committee received a report from representatives of Job Service North Dakota regarding a proposal to implement a "work first" reemployment model, which would consist of orientation to a reemployment program, a one-on-one assessment, development of employment plans, and periodic reemployment reviews of claimants. During a period of unemployment, a worker would go through a process that would initiate the reemployment process, conduct a face-to-face appointment, and complete an online resume. The model would be tested at control sites in Bismarck, Minot, Fargo, and Grand Forks.

Recommendations

Because no significant changes in federal law were adopted before the committee completed its study, the committee makes no recommendation for responding to the proposed changes in federal law.

The committee expressed its support for a request by Job Service North Dakota to the 59th Legislative Assembly for an appropriation of Reed Act funds adequate to fund procurement planning studies, including development and issuance of a request for proposals relating to the costs and appropriate technology to replace the mainframe computer application used to process unemployment insurance claims and unemployment insurance tax reporting and payment.

The committee also expressed its support for a proposal by Job Service North Dakota to request an appropriation by the 59th Legislative Assembly of $250,000 of Reed Act funds to fund a pilot project on intensive reemployment actions designed to demonstrate whether those actions can have a significant effect on reducing expenditures from the unemployment insurance trust fund.

CONTRACTOR COMPETENCY STUDY

Background

North Dakota Century Code Chapter 43-07 addresses licensing of contractors. A contractor includes "any person engaged in the business of construction, repair, alteration, dismantling, or demolition of bridges, highways, roads, streets, buildings, airports, dams, drainage or irrigation ditches, sewers, water or gas mains, water filters, tanks, towers, oil, gas, or water pipelines, and every other type of structure, project, development, or improvement coming within the definition of real or personal property, including the construction, alteration, or repair of property to be held either for sale or rental, and shall include subcontractor, public contractor, and nonresident contractor."

A nonresident contractor is any contractor who has not established and maintained a place of business within this state, or who has not made reports to North Dakota Workforce Safety and Insurance within the previous year of employees within the state, and who has not made contributions to the North Dakota Workforce Safety and Insurance fund accordingly, or who, during a like period has not made an income tax return in this state.

A contractor is required to be licensed if the cost, value, or price per job exceeds $2,000. The Secretary of State is responsible for enforcing the licensing provisions of NDCC Chapter 43-07 and may request the Attorney General to bring an action to enjoin a person from acting as a contractor if the person is not licensed as required.

An individual who is 18 years of age or older may apply for a license to act as a contractor by completing the necessary forms and submitting under oath a statement of the applicant's experience and qualifications as a contractor. In addition, the applicant must submit a copy of a certificate of insurance indicating liability coverage and submit a statement from Workforce Safety and Insurance that the applicant has secured satisfactory workforce safety and insurance coverage.

The Secretary of State is required to classify as not in good standing the license of any contractor who fails to:

1. Maintain liability insurance coverage.
2. File, renew, or properly amend any fictitious name certificate.
3. Maintain an active status of a corporation or registration as a foreign corporation.
4. Maintain an active status of a limited liability company or registration as a foreign limited liability company.
5. File or renew a trade name registration.
6. File or renew a limited liability partnership or foreign limited liability partnership.
7. File or renew a limited partnership or foreign limited partnership.

A contractor who has been notified by the Secretary of State that the contractor's license is not in good standing must cease soliciting or entering new contract projects. If the contractor does not correct the specified deficiency within 30 days or if the contractor enters new contract projects while the contractor's license is not in good standing, the Secretary of State is required to revoke the license of the contractor under the procedures set forth in the Administrative Agencies Practice Act (NDCC Chapter 28-32).

Four classes of licenses define the limitations on the types of projects on which a contractor may work. The holder of a Class A license is subject to no limitation as to the value of any single contract project. The holder of a Class B license may not engage in the construction of any single contract project of a value in excess of $250,000, the holder of a Class C license may not engage in the construction of any single contract project of a value in excess of $120,000, and the holder of a Class D license may not engage in the construction of any single contract project of a value in excess of $50,000. The fee for a Class A license is $300, $200 for a Class B license, $150 for a Class C license, and $50 for a Class D license. A license is effective for one year.

A licensee may renew a contractor's license by obtaining from the Secretary of State a certificate of renewal. When filing for a renewal, the licensee is required to file an application that includes a listing of each project, contract, or subcontract completed by the licensee during the preceding calendar year in North Dakota, and if a performance bond was required, the name and address of the issuer of the bond. In addition, the applicant is required to include with the application a copy of a certificate of liability insurance and a certification that the applicant has submitted all payroll taxes. An application for renewal must be filed by March 1 of each year. The fee for renewal of a license is equal to 20 percent of the license fee for that class of contractor. If a contractor fails to file for a renewal by March 1, the contractor is deemed to be unlicensed. However, the contractor has until June 1 of that year to renew a license by paying a penalty fee of 75 percent of the renewal fee and paying the renewal fee. After June 1, any license not renewed is revoked.

The Secretary of State is required to maintain a complete indexed record of all applications, licenses, certificates of renewal, revocations, and other information maintained on contractors. The Secretary of State may dispose of an inactive contractor file after two years if no attempts have been made to apply for a new license or renew the license.

North Dakota Century Code Section 43-07-14 establishes the grounds under which a complaint may be filed against a contractor, including:

1. Abandoning any contract without legal excuse.
2. Diverting funds or property received under express agreement for the prosecution or completion of a specific contract, or for a specified purpose in the prosecution or completion of any contract, and applying using the funds for any other contract obligation or purpose to defraud or deceive creditors or the owner.
3. Engaging in any fraudulent or deceptive acts or practices or misrepresentation as a contractor in consequence of which one or more persons is injured in a total amount exceeding $3,000.
4. Making any false statement in any application for a license or renewal, violating any provision of NDCC Chapter 43-07, or being convicted of an offense the Secretary of State determines has a direct bearing on the applicant's or licensee's ability to serve the public as a contractor.
5. Engaging in work without any trade or professional license required for that work.
6. Failing to fully refund the contracting party's advance payment if a rebuttable presumption of abandonment has arisen and the contracting party has made a request to the licensee for a refund.

The Secretary of State is required to review all complaints filed with respect to contractors. If the Secretary of State determines that a complaint provides sufficient facts upon which a reasonable person could conclude that one or more of the acts or omissions set forth in NDCC Section 43-07-14 have been committed, the Secretary of State may initiate an adjudicative proceeding in accordance with Chapter 28-32. If, after an adjudicative proceeding or as part of an informal disposition under Chapter 28-32, the Secretary of State determines that the licensee is guilty of an act or omission charged or if the licensee admits guilt to an act or omission charged, the Secretary of State may suspend or revoke the contractor's license, order a civil penalty of not more than $1,000, order restitution in an amount not more than $5,000, or impose a lesser sanction or remedy. The Secretary of State may suspend the contractor's license for a period of not more than

60 months and may not renew, reinstate, or issue a new license until the licensee has paid any civil penalty or restitution imposed. The Secretary of State may bring an action in district court to recover restitution or penalties. A contractor aggrieved by a decision of the Secretary of State in revoking or suspending the contractor's license or ordering restitution or penalties may appeal the decision to the district court. A licensee is prohibited from obtaining a license under any name during the period of revocation or suspension. A licensee whose license has been revoked may not be relicensed for a period of up to five years.

North Dakota Century Code Section 43-07-19 addresses nonresident contractors. An applicant for a contractor's license who is not a resident of North Dakota, by signing and filing the application, is deemed to have appointed the Secretary of State as the applicant's lawful agent upon whom may be served all lawful process in any action or proceeding against the nonresident contractor. Registered foreign corporations entitled to do business in this state according to Chapter 10-19.1, registered foreign limited liability companies entitled to do business in the state according to Chapter 10-32, foreign limited liability partnerships entitled to do business in the state according to Chapter 45-22, and foreign limited partnerships entitled to do business in the state according to Chapter 45-10.1 and having a current registered agent and registered address on file in the Secretary of State's office are not required to appoint the Secretary of State as agent for service of process.

North Dakota Century Code Section 43-07-25 provides that on request the Secretary of State must provide city and county enforcement officials with a list of licensed contractors. The Secretary of State also is required to provide information on the activities of a contractor doing business in this state of which officials of Workforce Safety and Insurance, Job Service North Dakota, or the Tax Commissioner may be unaware and that may be relevant to the duties of those officials.

Testimony and Committee Considerations

The committee received reports from the Secretary of State and a representative of the Attorney General's office regarding the handling of complaints against contractors. Although the Secretary of State, the Attorney General, and Workforce Safety and Insurance have participated in enforcement checks to determine if contractors are licensed and paying all applicable state payroll taxes and have encouraged consumers to seek background information regarding contractors before entering contracts, consumers in the state occasionally experience problems with unlicensed contractors and contractors that do not complete projects to the satisfaction of consumers. The testimony indicated that a relatively small number of contractors are responsible for a large number of the complaints filed with the Secretary of State and the Attorney General.

The committee received testimony suggesting that some out-of-state contractors that have done work in the state after recent storms or disasters have performed poor work and quickly left the state with no intention of fulfilling warranties. Because concern was expressed that treating out-of-state contractors differently from resident contractors could be found to be unlawfully discriminatory by the courts, committee members generally were reluctant to impose additional regulatory burdens with respect to the licensing process. However, the Secretary of State presented proposals to the committee to enhance the authority of the Secretary of State and the Attorney General to regulate the conduct and the licensing of contractors.

Although concerns were expressed regarding placing additional burdens on applicants for licenses, the committee considered a bill draft that authorized the Secretary of State to request criminal history background information for applicants for a contractor's license or for renewal of a contractor's license; authorized the Attorney General to use consumer fraud statutes to bring complaints against contractors; and provided additional grounds for denying an application for a contractor's license, refusing to renew a license, or revoking a license.

Recommendation

The committee recommends Senate Bill No. 2026 to authorize the Secretary of State to request criminal history record information regarding an applicant for a contractor's license or contractor seeking to renew a license; to authorize the Attorney General to bring a complaint against a contractor under consumer fraud laws; and to specify additional grounds upon which the Secretary of State may deny an application for a contractor's license, refuse to renew a license, or revoke a license.

STATE BOARD OF AGRICULTURAL RESEARCH AND EDUCATION REPORT

Pursuant to NDCC Section 4-05.1-19, the State Board of Agricultural Research and Education submitted a report to the committee on its annual evaluation of research activities and expenditures. The report summarized how the board is responding to each of the board's statutory responsibilities and reviewed the various programs and activities of the board.

WORKFORCE SAFETY AND INSURANCE REPORTS

Safety Audit of Roughrider Industries Work Program and Performance Audit of the Modified Workers' Compensation Coverage Program

The committee received a report from Workforce Safety and Insurance regarding 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 provide workers' compensation coverage for inmates in prison work

programs and to allow Roughrider Industries to continue receiving federal funding through the prison industry enhancement certification program. The safety audit indicated Roughrider Industries was found to be in compliance with all components of the Workforce Safety and Insurance risk management program. The September 2004 audit of the modified workers' compensation coverage program concluded that the desired results and effectiveness of the program are being achieved. The Workforce Safety and Insurance Board of Directors may be presenting a proposal to allow the board to set an adequate premium rate if the board determines that the premium charged is not adequate to cover administrative expenses for the program.

2004 Premium Rate Increase

The Workforce Safety and Insurance Board of Directors authorized the agency to proceed in March 2004 with a proposal for a premium rate increase for workers' compensation coverage. The board indicated the increase was necessary to counteract the rapid increase in medical and prescription drug costs. The proposed rate changes for the 141 individual classifications ranged from 4 to 14 percent. The recommendation presented by the board provided for a 9 percent average rate increase. Because of the investment gains of the workers' compensation fund, a performance dividend of $5 million to $6 million was proposed to mitigate the premium rate increase. Therefore, the net effect of the premium rate proposal was estimated to average 4 percent. Representatives of Workforce Safety and Insurance stated that even with the proposed premium increase, a national study indicated that North Dakota employers will continue to pay the lowest premiums in the country while ranking in the top 20 states in benefits paid to injured workers. In addition, the premium rates remain significantly lower than the rates were 10 years ago. However, it was reported that because reductions in rates attributable to efficiencies in administration, safety, and cost control have reached a point at which further savings are not feasible, premium rates must be increased to account for increased costs due to medical and prescription drug cost inflation.

CRIMINAL JUSTICE COMMITTEE

The Criminal Justice Committee was assigned five studies. House Concurrent Resolution No. 3004 directed a study of the state's method of providing legal representation for indigent criminal defendants and the feasibility and desirability of establishing a public defender system. Senate Concurrent Resolution No. 4008 directed a study of the need for guardianship services, standards and practices for guardians, and funding for programs for individuals with mental illness, vulnerable elderly adults, and individuals with traumatic brain injuries. House Concurrent Resolution No. 3062 directed a study of vulnerable adult abuse and neglect with an emphasis on whether certain individuals should be required to report suspected incidents of vulnerable adult abuse and neglect. Senate Concurrent Resolution No. 4014, although not prioritized by the Legislative Council, was assigned to the committee by the chairman of the Legislative Council. The resolution directed a study of the methods for funding and providing law enforcement training in this state. Also by directive of the chairman of the Legislative Council, in response to an April 14, 2004, opinion of the Attorney General, the committee was directed to study the employment conditions issues contained in North Dakota Century Code (NDCC) Section 34-06-05, including those surroundings or conditions that may be detrimental to an employee's health or morals. 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 Lois Delmore (Chairman), Bill Amerman, Randy Boehning, Ron Carlisle, Duane DeKrey, Dennis Johnson, Lawrence R. Klemin, William E. Kretschmar, Carol A. Niemeier, and Mike Norland and Senators Stanley W. Lyson, John T. Traynor, Thomas L. Trenbeath, and Constance Triplett.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2004. The Council accepted the report for submission to the 59th Legislative Assembly.

INDIGENT DEFENSE STUDY

Background

The Sixth Amendment to the United States Constitution guarantees to all individuals 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 individual accused of a crime before the individual can be sentenced to jail or prison if that individual cannot afford to hire an attorney. These decisions include *Gideon v. Wainwright*, 372 U.S. 335 (1963), in which the Supreme Court interpreted the 6th 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.

The demand for indigent defense services grew steadily in the two decades following *Gideon*; however, the last 10 to 15 years have seen significant increases in the need for state-funded counsel. Prime factors contributing to the recent explosion in indigent defense caseloads are the "war on crime" and a major increase in drug offenses. It is not uncommon for indigent defense programs to represent up to 90 percent of all criminal defendants in a given felony jurisdiction. The cost of providing indigent defense services has escalated sharply, leaving states to search for ways to contain the costs of indigent defense.

Cost is usually the primary factor determining what 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

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 that will provide representation in some or all 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.

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 where 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 for Providing Services

The states have developed a wide range of systems to respond to the United States Supreme Court 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 half of the states have organized some form of 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. A statewide agency may operate under the executive or judicial branch of government or as an independent public or private agency. Often, a governing body or commission is created to enact policy and select the state public defender or chief counsel of the agency. In some states a state public defender is appointed by the Governor.

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.

Most of these statewide programs provide public defender representation in every county in the state. However, in some states, such as New Hampshire and Vermont, it is not practical to operate staffed public defender offices in rural areas, so assigned counsel or contract programs have been developed for these regions.

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. Massachusetts, for example, has a state public defender and a commission. The commission provides counsel in every indigent defendant case, but the statute mandates representation in particular types of cases between public defenders and the private bar.

State commissions are found 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. Frequently in the state commission system, local jurisdictions within the state are authorized by statute to determine the type of program (public defender, assigned counsel, or contract) that best suits their needs within the adopted guidelines. The local jurisdictions then operate the program independently at the local level. Arkansas, Georgia, Indiana, Kansas, Kentucky, Louisiana, North Dakota, Ohio, and South Carolina all have such commissions or boards, although their duties and responsibilities vary substantially.

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 of what type of system to use may be made by the county board, 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. 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 Florida the legislature has created 20 independent publicly elected public defender offices. There is one office for each judicial district. While this structure is mandated by the state, there is no state oversight at the trial level.

In Illinois, by statute, every county with a population of 35,000 or more must have a local public defender program. In less populous counties, public defender programs are optional. There is, however, no state oversight at the trial level.

In Iowa a state public defender is responsible for the tasks common to those of an executive director of a statewide indigent defense commission, although Iowa has no such commission. The state public defender oversees the local public defender, contract, and assigned counsel programs adopted and operated by the 99 counties.

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 a county opts out of the state public defender system, it must establish its own program and pay for it totally out of county funds.

In Oregon all county programs are established through a contract negotiation process with the Office of the State Court Administrator.

In Pennsylvania, by statute, every county must have a local public defender program. The local programs are not subject to any state oversight at the trial level.

In Virginia the legislature can create by statute a public defender program in any area of the state. Areas

not designated for public defender programs are served by local assigned counsel programs.

In West Virginia a state public defender services office administers all funds for indigent defense throughout the state to 13 nonprofit public defender corporations that serve 20 of 55 counties and processes assigned counsel vouchers for the remaining 35 counties. The state provides 100 percent of the funds for indigent defense.

Funding Systems

State indigent defense systems are funded by various sources, including state funds, county funds, user fees, court costs, or by a combination of those. Twenty-three states fund their trial system exclusively through state funds, 10 states exclusively through county funds, and 17 states, including North Dakota, through a combination of state and county funds. In addition, a growing number of states rely on filing fees, cost recovery, and court costs assessments from civil litigants and criminal defendants to help fund indigent defense.

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 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 non-felony 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 divided into seven judicial districts. In each judicial district a presiding judge supervises the court services of all courts in the district. The position of district judge is an elected position filled every six years by a nonpartisan election held in the district in which the judge will serve. 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 of North Dakota, the Attorney General, and the Legislative Assembly.

Testimony and Committee Considerations

The committee received testimony and information from the Supreme Court, the State Bar Association of North Dakota, district court judges, and attorneys currently and formerly involved in the indigent defense contract process regarding issues facing the state's indigent defense system. The committee's consideration centered on seven issues--concerns about the current indigent defense system, the indigent defense administration fund, the federal indigent defense system, the Indigent Defense Task Force, the Indigent Defense Task Force proposals and recommendations, proposed legislation, and other indigent defense issues.

Concerns About the Current Indigent Defense System

The committee received testimony from the Supreme Court that the current system of appointing and contracting with attorneys by the judiciary raises conflict of interest concerns. 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 also expressed concern over the lack 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 contract to do indigent defense work in these counties has resulted in the need to hire outside counsel for indigent defense cases.

The testimony from the Supreme Court indicated that the state has relied on young attorneys who are willing to take the indigent defense contracts. The testimony indicated that when reviewing criminal trial transcripts in which indigent defense counsel has been appointed, there is a general concern about the effectiveness of counsel. It was suggested that this may not solely be because of poor or inexperienced attorneys but may be the result of the lack of time to spend on the cases.

The testimony also noted that the increasing indigent defense caseload in the state is due in large part to the increasing methamphetamine problem in the state, especially in the rural areas where there are fewer attorneys willing to do indigent defense work. According to the testimony, the large increases in caseload are very difficult to handle in a contract system that operates on a fixed budget. Thirty-eight new attorneys were admitted to the bar last year. It was noted that there were more

attorneys in the state last year who died than were admitted and the newly admitted attorneys are not locating in the rural areas.

The committee also received testimony from an attorney formerly involved in the indigent defense contract process. According to the testimony, heavy caseload and inadequate compensation were the reasons the attorney terminated his contract with the state. It was also noted that the increase in drug offenses in the northwestern part of the state has greatly impacted the number of cases being assigned to the attorneys. The testimony indicated that when under contract, many attorneys are not earning more than $50 per hour. Because there are no attorneys currently under contract with the court in the Northwest Judicial District, the court is hiring attorneys to do the indigent defense work at a rate of $65 per hour. It was recommended that to attract attorneys to take the contracts, the hourly rate should be in the $75 to $85 per hour range. The testimony indicated that there were not any other attorneys or law firms in the Williston area who are interested in the criminal defense contract and that the court was struggling to find attorneys to take the work on an assignment basis. The attorney estimated that he spent approximately 50 hours per month, or one-third of his time, on the contract cases he had been assigned.

Indigent Defense Administration Fund

The committee received testimony regarding House Bill No. 1088 (2003), which established the indigent defense administration fund and the court facilities improvement and maintenance fund. Under that legislation, the first $750,000 collected from the court administration fee is to be deposited in the indigent defense administration fund, the next $460,000 is to be deposited in the court facilities maintenance fund, and any amounts collected beyond those amounts are to be in divided equally between the two funds. As of October 2004 the collections from the administration fee totaled $1,000,832. Based upon an estimate of $90,506 per month, the estimate of total receipts through June 30, 2005, is $1,905,891. It was estimated that in addition to the $750,000 that will be deposited in the indigent defense administration fund and the $460,000 that will be deposited in the court facilities maintenance fund, an additional $347,945 will be deposited in each fund this biennium. Approximately 70 percent of the court administration fees that have been assessed have been collected. The majority of the administration fees that has been collected are from misdemeanor offenses.

The judicial branch 2003-05 budget for indigent defense services in the state is $4,312,397. According to the testimony, about $400,000 of the funds in the indigent defense administration fund has been used to enhance the indigent defense contracts for the upcoming year.

The committee also received testimony from a district judge regarding the court administration fee imposed by House Bill No. 1088. The judge's concerns centered on the employment of the courts as a revenue source, especially when the funds are dedicated funds in which the courts have a direct interest. The testimony indicated that there are three groups of defendants that appear before the court in criminal cases--the group that is not indigent and may or may not have privately retained counsel, the group that fall below the indigent defense guidelines and are represented by court-appointed legal counsel, and the group that appear before the court, do not seek legal representation, and enter pleas of guilty. All three groups, it was noted, are routinely advised by the court that if they enter a plea of guilty to the alleged offense they will be subject to mandatory court administration fees as mandated for the level of the alleged offense. The groups however are not routinely advised that the court may waive the fees if they are indigent. The result according to the testimony is that frequently defendants are subjected to mandatory court administration fees that may be inappropriate if the court were fully informed as to the financial status of the defendants. The testimony also noted that a court-appointed legal counsel, who has a direct interest in the revenue generated from court administration fees, may well argue to the court that the court should reduce the fine imposed since the defendant will be subject to the existing court administration fees. It was also noted that criminal defendants are subjected to court administration fees dedicated to court facilities improvement and maintenance but no such fee is imposed upon others who use court facilities, such as civil litigants.

Federal Indigent Defense System

During the course of its study of indigent defense issues, the committee received testimony from a representative of the United States District Court regarding the federal indigent defense program. The federal Criminal Justice Act of 1964 provides for the hourly payment of indigent defense counsel in the federal courts. In the federal court system in North Dakota, attorneys are appointed on a case-by-case basis. Attorneys are paid a flat rate of $90 per hour with caps of $5,200 for felony cases, $1,500 for misdemeanors, and $3,700 for appeals. Additional compensation can be approved by the court. Attorneys can request additional money for interpreters, investigators, and experts.

The Criminal Justice Act provides authority for the creation of community defender organizations and federal public defender organizations. The attorneys in the public defender organizations are federal employees, while community defender organizations are nonprofit groups and the attorneys are employed by the nonprofit group. Eighty-three of the 94 judicial districts in the United States have implemented either the federal public defender organization or the community defender organization systems. Of those 83 districts, 58 districts have the federal public defender office system.

North Dakota does not have either type of organization but rather uses a panel attorney system. Each federal district adopts its own plan. All members of the federal bar are eligible to be on the panel. There are 302 attorneys on the North Dakota panel and about one-fourth of those attorneys are actively taking

appointments. The district court has two attorneys on contract who serve as advisors to the panel attorneys. When making appointments, the magistrate judge looks at the needs of the defendant and the experience of the attorneys. It was noted that most attorneys are cutting their regular fees by $40 to $50 per hour when they take a case. Approximately 200 appointments are made per year in the state at a cost of about $400,000. It was noted that some incentives for attorneys to take cases are the $90 per hour rate and the promptness of getting paid, usually within 10 to 14 days after submitting a voucher. It was also noted that the federal indigent defense program is a good program for young attorneys to get experience in federal court. Defendant indigency status is based upon financial information submitted by a defendant. Once indigency is determined, the magistrate appoints counsel.

Indigent Defense Task Force

The committee received extensive testimony from the State Bar Association of North Dakota Indigent Defense Task Force. The task force was composed of a panel of lawyers, judges, and legislators who were selected because of their understanding of the problems with the current indigent defense system. Throughout the course of the interim, the task force reported its findings and recommendations to the committee.

The task force, with funding from the State Bar Association of North Dakota, the Legislative Council, and the Supreme Court, contracted with the Spangenberg Group, a national consulting firm that conducts studies of indigent defense programs. The Spangenberg Group has reviewed 32 statewide systems and has been under contract with the American Bar Association for the last 12 years to provide support and technical assistance to groups working on indigent defense. The Spangenberg Group outlined the following issues for consideration in the task force's study:

- The scope of the right to counsel in North Dakota.
- The type of indigent defense system that would work best for North Dakota, whether it be a public defender system, a contract system, or a combination of the two.
- The type of oversight structure, whether it be an independent body, the judicial branch, or the executive branch.
- The source of funding.

The committee received testimony and a report from the Spangenberg Group regarding the findings of its study. The Spangenberg Group conducted interviews with current and former contract attorneys, judges, state's attorneys, and court administrators in Dickinson, Bismarck, Jamestown, and Fargo. In conducting the site work and reviewing data on the state's indigent defense system, the Spangenberg Group concluded that the North Dakota system is wrought with many serious problems. It was pointed out that the current system is in danger of failing to fulfill its constitutional mandate of providing indigent defendants with effective assistance of counsel.

North Dakota is the only state in the country that uses an indigent defense model relying primarily on private attorneys working under contract with judges. Under North Dakota's system, attorneys agree to accept flat fee contracts requiring them to handle an unlimited number of cases in a given county or judicial district. This type of contracting method presents two primary potential problems--a lack of independence from the judiciary and the inability for contract attorneys to receive relief from excessive case assignments not anticipated when the contract period began. These two potential problems are impacting the quality of legal representation provided to indigent defendants in North Dakota. It was noted that the chief problem with North Dakota's indigent defense system is the pervasive absence of independence for the defense function from the judiciary.

In conducting the study, the Spangenberg Group met with three presiding judges. All three judges were uncomfortable with the current system. North Dakota has some of the lowest rankings among all states in the nation for indigent defense expenditures and cost per capita. The average cost per capita for indigent defense in nine states similar to North Dakota in population and geography was $8.54 while in North Dakota it was $3.23. In terms of overall indigent defense expenditures, North Dakota spent 43 percent less than the state with the second-lowest expenditure--Wyoming. In terms of cost per capita, North Dakota spent 49 percent less than the state with the second-lowest rank--Idaho. The 2003-05 appropriation of $4.3 million for indigent defense was a 5 percent increase over the previous biennium; however, the overall caseload has increased by 8 percent and the felony caseload has increased by 15 percent.

According to the Spangenberg Group, the goal in the state is to pay contract attorneys $65 per hour, which is $10 an hour less than the amount recommended by the North Dakota Legal Counsel for Indigents Commission. It was noted however that none of the attorneys interviewed reported earning a full $65 an hour for their contract work. It was also noted that when a contract attorney is appointed to a very serious case, such as a homicide case, there is often no additional pay for the time required to properly handle the case. In addition to concerns about high caseloads and inadequate pay, there are also concerns that there are no minimum qualifications for attorneys to get contracts. According to the testimony, all judges interviewed noted that they receive complaints about contract attorneys from indigent defendants, most concerning a lack of communication with their lawyers. The testimony indicated that the current system does little in the way of monitoring the work of contract attorneys and there is not a formal process for addressing client complaints. It was noted that some attorneys reported pressure from judges to not request motions, preliminary hearings, or trials.

The Spangenberg Group also reported that there is a disparity between the level of resources provided to contract attorneys and state's attorneys. It was noted

that this disparity can impact the quality of representation provided by defense counsel by diminishing the level of adversarialness called for in a healthy criminal justice system. Full-time state's attorneys receive salaries and benefits, are provided with support staff, and are sent to training at no cost. It was noted that in the Burleigh County State's Attorney's office, additional resources include Westlaw; victim witness coordinators; access to law enforcement personnel for help with investigations; and assistance from the crime lab, medical examiner, toxicologist, and out-of-state experts when needed. By comparison it was noted that contract attorneys receive no benefits, have to pay for their own training and online legal research, and must seek approval for investigators and experts. Finally, it was noted that contract attorneys have no effective voice in the system.

The Spangenberg Group report recommended that North Dakota create a primary public defender system to fulfill its duty of providing its indigent citizens with meaningful and effective representation. In addition to a central administrative office for the public defender system, the creation of a contract administrator position was recommended. The position should be staffed with someone who is familiar with indigent defense practice and issues. It was further recommended that North Dakota create an indigent defense commission that is involved in policy oversight of both the public defender and contract systems, serves as a voice for indigent defense needs, and is responsible for selecting and overseeing the state's public defender. It was noted that regardless of the type of indigent defense system North Dakota chooses, there will be an increase in funding needs. The indigent defense systems in Connecticut and Georgia have been sued; the Georgia case resulted in the state being required to double and in some cases triple its level of funding. Montana's indigent defense system has recently been sued, but the litigation is on hold pending action by the Montana legislature, which has proposed a statewide public defender system.

Indigent Defense Task Force Proposals and Recommendations

Based upon its own findings and upon the recommendations of the Spangenberg Group, the Indigent Defense Task Force presented to the committee a legislative proposal for a structure to provide indigent defense services in the state. The proposal was based on two central principles--the delivery and management of indigent defense services should be removed from the judicial branch and the delivery of indigent defense services should be accomplished through an independent entity with general responsibility for funding, management, and oversight. The task force proposal differed from the recommendation of the Spangenberg Group in that the proposal did not contemplate the establishment of a public defender system as the primary vehicle for providing indigent defense services.

The bill draft proposed by the task force established a seven-member commission on legal counsel for indigents. The members would have staggered terms and should have experience in criminal defense or other appointed counsel cases or have demonstrated a commitment to quality indigent defense representation. Under the bill draft, the commission had a variety of responsibilities regarding the delivery, management, and oversight of indigent defense services. The two central responsibilities of the commission were to establish and implement a process for contracting for legal counsel services for indigents and, if deemed necessary and appropriate, to establish public defender offices within the state. The commission's other derivative responsibilities included tracking and monitoring appointed counsel caseloads, developing standards regarding delivery of indigent defense services, and approving a biennial budget for submission to the Legislative Assembly. The bill draft authorized the commission to enter an agreement with a city or county to provide indigent defense services that the city or county would otherwise be required to provide. The commission would appoint a director who would have to be a licensed attorney and be eligible to practice law at the time of appointment. The director's responsibilities included preparation of a proposed budget for consideration by the commission; preparation of an annual report on operation of the system; hiring staff, including attorneys as public defenders; and otherwise administering and implementing standards, rules, and policies adopted by the commission. The bill draft also amended NDCC Section 27-20-49 to transfer responsibility for appointed counsel services in juvenile court cases from the Supreme Court to the new commission; amended Section 29-07-01(1) to identify the commission, rather than the court, as being responsible for determining the rate of compensation for appointed counsel; amended Section 29-07-01.1 to appropriate money in the indigent defense administration fund to the commission rather than to the judicial branch; and provided for a transition from the Supreme Court to the commission and for effective dates.

The task force also presented information to the committee regarding the estimated costs of implementing the indigent defense system proposed in the bill draft. The estimated biennial cost to fully and adequately implement the proposed system would be $11,737,301. This amount includes approximately $750,000 in special funds, leaving a general fund impact of $10,954,901. The current indigent defense budget for the 2003-05 biennium is $4,312,397 from the general fund plus approximately $750,000 in special funds, for a total biennial budget of $5,062,397. North Dakota will spend about $2.5 million per year on indigent defense during the 2003-05 biennium. By way of comparison South Dakota spends about $6.3 million per year, Montana spends about $8 million per year, and Wyoming spends about $6.5 million per year.

The proposed estimate is based on compensating contract counsel at $75 per hour, which is the presumptive amount per hour currently identified under NDCC Section 29-07-01.1 and is the amount per hour recommended by the North Dakota Legal Counsel for Indigents Commission. The testimony indicated that the estimate is based on 21,810 projected case assignments for the biennium. This compares with 16,747 assignments

during the 1999-2001 biennium and 18,039 during the 2001-03 biennium. Costs associated with the establishment and operation of the Commission on Legal Counsel for Indigents is estimated to be approximately $1,235,285 for the 2005-07 biennium. This includes the annual salary and benefits for a director, who would be appointed by the commission; a deputy; an administrative assistant; and four investigators. It was noted that because of the additional work that would be required in the first year, the commission may need more than the $8,654 estimated for expenses in the proposal.

One committee member suggested that the Legislative Assembly may want to consider whether the state's indigent defense system could be placed within an existing agency rather than to create a new agency.

Proposed Legislation

Based upon the legislation proposed by the Indigent Defense Task Force, the committee considered a bill draft that established the Commission on Legal Counsel for Indigents. The bill draft provided for the powers and duties of the commission and for a transition of indigent defense services from the Supreme Court to the commission. Under the bill draft, the Supreme Court maintained the current contract system for six months. However, on January 1, 2006, all indigent defense funds would be transferred to the commission. The bill draft did not contain an appropriation but relied on the Supreme Court to include the funding in its budget request so the amount would be included in the executive budget submitted to the Legislative Assembly rather than requiring the Legislative Assembly to add the amount to the executive budget.

Testimony concerning the bill draft indicated that the intent of the task force in drafting the bill draft was to separate the money needed to establish the commission from the money needed to fund indigent defense services. It was emphasized that the $1,135,000 needed to establish the commission should be included in the bill draft and that the appropriation for the attorney services would be included in the Supreme Court budget request. Testimony in support of the bill draft indicated that the state needs to act on the issue of indigent defense. According to the testimony, the current system is in crisis and is not meeting the constitutional requirements because of inadequate funding. Because of the low funding and compensation, indigent defense attorneys have the incentive to plead out cases. Montana's indigent defense system has been challenged by the American Civil Liberties Union (ACLU). Montana requested that it be given an attempt to address the problem legislatively. According to the testimony, the Montana legislature's proposal to the ACLU is to increase indigent defense funding from $8.5 million to $20 million. According to the testimony, North Dakota's indigent defense system has many of the same problems as Montana's system, including inadequate funding and overworked attorneys. State and federal constitutions require that a defendant is entitled to an adequate defense. It was emphasized that this is where the ACLU may step in and prove that defendants are not getting an adequate defense. The testimony noted that the system proposed in the bill draft does not totally replace the contract system with a public defender system but rather provides for a combination of the two systems. It was noted that there may be some merit to a full-time public defender system; however, this bill draft was the compromise reached by the task force. Finally, it was noted that as long as the appropriate safeguards and funding are in place, this proposal solved the problems with the current system.

Other Indigent Defense Issues

The committee received testimony that costs of indigent defense for mental health commitments, the civil commitment of sexual offenders, and guardians ad litem are still the responsibility of the county. These indigent defense costs are costing the counties about $300,000 per biennium. The committee was urged to consider whether these costs should be the responsibility of the state.

In response to committee concerns about the lack of attorneys willing to handle indigent defense cases, it was suggested that the Legislative Assembly may want to consider offering a law student loan repayment and forgiveness program for new attorneys who provide indigent defense services and other public interest legal work. The committee received testimony that over the past four years, 84 to 93 percent of law students at the University of North Dakota School of Law borrowed money to finance their law school education. The average student loan amount for graduates of the law school in 2003 was $48,800. The committee also received information on loan repayment and forgiveness programs in other states and on salaries and employment of recent law school graduates. A number of states, including Arizona, Florida, Maine, Maryland, Minnesota, New Hampshire, North Carolina, and Texas, have established loan repayment assistance and forgiveness programs for public service lawyers.

Recommendation

The committee recommends Senate Bill No. 2027 to establish the Commission on Legal Counsel for Indigents. The bill provides for the powers and duties of the commission and for a transition of indigent defense services from the Supreme Court to the commission. Under the bill, the Supreme Court would maintain the current contract system for six months; however, on January 1, 2006, all indigent defense funds will be transferred to the commission. The bill includes the funding for the establishment of the Commission on Legal Counsel for Indigents.

GUARDIANSHIP SERVICES STUDY

Background

When a court determines that an individual lacks the capacity to make or communicate the decisions necessary to manage personal affairs, a guardian may be appointed. Guardianship is the process by which a

court, after determining that an individual is incompetent to make specific decisions, delegates the right to make those decisions to a guardian. Depending on the state statutes, a guardian may also be referred to as a conservator, committee, or curator. The procedures to initiate a guardianship and the practices following the appointment of a guardian also differ from state to state. While all states require some sort of petition, notice, and judicial consideration before appointing a guardian, the extent of due process rights afforded the alleged incapacitated person varies from state to state.

As a general rule, there are two types of guardianships--a guardianship affecting personal interests, known as guardianship of the person and a guardianship of the estate. The spheres of authority of a guardian of the person and of a guardian of the estate are distinct and mutually exclusive. Some jurisdictions recognize a third type of guardianship, known as a limited guardianship. In a limited guardianship, the guardian is entrusted with only those duties and powers that the ward is incapable of exercising.

The purpose of statutes relating to guardianship is to safeguard the rights and interests of minors and incompetent individuals, and it is the responsibility of the courts to be vigilant in seeing that the rights of those individuals are properly protected. The court with jurisdiction over a guardianship is the superior guardian, while the guardian is deemed to be an officer of the court. The conduct of the guardian is subject to regulation by a court.

Development of North Dakota's Guardianship Law

Pre-1973 Guardianship Law

Under North Dakota's pre-1973 guardianship law, the county court was authorized to appoint a guardian for an individual or for the estate of any incompetent state resident. The guardianship proceeding was initiated by the filing of a petition with the county court. The alleged incompetent individual was served a citation, giving notice of the filing and the date of the hearing on the petition. After an informal hearing at which the attendance of the alleged incompetent individual was not required, the court was authorized to appoint a guardian if the court determined that an appointment was either necessary or convenient. The pre-1973 statutes did not require a medical evaluation or other evidence that the individual was actually incompetent. The court was also authorized to appoint a guardian ad litem. As distinguished from current law, the pre-1973 law established no standard of proof for determining whether an individual was incompetent.

1973 Adoption of Uniform Probate Code Article V

In 1973 the North Dakota Legislative Assembly adopted the Uniform Probate Code. Article V of the Uniform Probate Code divided guardianship law into two parts. The first part, guardianship, provided for the protection of the person and the second part, conservatorship, provided for the protection of the estate. Article V differed from pre-1973 law in that the article separated the guardianship of the person and conservatorship of estates and property, improved due process provisions, and improved powers of the supervising courts. Article V also provided for a durable power of attorney that did not terminate on the disability or incompetence of the principal. In addition, Article V contained separate provisions for guardianships of minors and individuals who were mentally incompetent. Article V also required the appointment of a physician to examine the proposed ward and a visitor to interview both the proposed ward and the person seeking appointment as the guardian. Article V defined visitor as an individual who is trained in law, nursing, or social work and is an officer, employee, or special appointee of the court with no personal interest in the proceedings. The notice provisions defects of the pre-1973 statutes were partially remedied by Article V. Under Article V, a waiver of notice by a proposed ward was not effective unless the ward attended the hearing or the ward's waiver of notice was confirmed in an interview with the court-appointed visitor.

The adoption of Article V of the Uniform Probate Code resulted in other changes in the state's guardianship law. In proceedings for the removal of a court-appointed guardian, Article V changed the focus from the behavior of the guardian to the best interest of the ward. Another change was in venue for proceedings subsequent to appointment. The pre-1973 statute limited the jurisdiction to the county court that appointed the guardian. Article V gave the court in the county in which the ward resided concurrent jurisdiction with the appointing court in any subsequent proceedings relating to the guardianship.

1983 Amendments to Guardianship Statutes

In 1983 the Legislative Assembly passed House Bill No. 1057. The bill primarily dealt with three issues--the statutory guardianship of the superintendent of the Grafton State School, the services for developmentally disabled persons, and limited guardianships. The bill deleted provisions making the superintendent of Grafton State School the automatic guardian of the residents at Grafton. The bill also amended the statutory requirements for individualized habilitation plans by requiring that the plan state whether the developmentally disabled individual needs a guardian and determine the degree of protection the individual needs.

Regarding limited guardianship, House Bill No. 1057 expanded the definitions of "conservator" and "guardian" to include limited conservators and limited guardians. The bill directed the court to exercise its authority consistent with the "maximum self-reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's actual mental and adaptive limitations or other conditions warranting the procedure." The provision required the court to make item-specific determinations and that the powers of the guardian be tailored to the actual limitations of the ward. The bill permitted the court to limit the powers of the guardianship at the time of appointment or at a later date. The bill also

specifically required the court to determine whether the proposed ward is mentally incompetent and thus not qualified to vote. The bill recognized the degrees of incapacity or incompetence and required the court to match the guardian's responsibilities with the ward's actual mental and adaptive limitations.

1989 Amendments to Guardianship Statutes

In 1989 the Legislative Assembly enacted House Bill No. 1480, which made additional amendments to the guardianship provisions of the Uniform Probate Code. The bill provided for a definition of "alternative resource plan" and "least restrictive form of intervention." The bill also amended NDCC Section 30.1-28-02 to provide that the proposed ward may demand change of venue to either the county of residence or the county where the proposed ward is present. The bill expanded the duties of the attorney to include a personal interview of the proposed ward, explaining the guardianship proceeding to the proposed ward, and representing the proposed ward as guardian ad litem. The bill also expanded the duties of the physician and the visitor and provided for guardian reporting requirements.

Current Guardianship Law

The guardianship provisions of Article V of the Uniform Probate Code enacted in 1973 and the subsequent amendments in 1983 and 1989 are codified as NDCC Chapters 30.1-26, 30.1-27, 30.1-28, and 30.1-29. Chapter 30.1-26 contains the general provisions that pertain to guardianship, including definitions and jurisdiction; Chapter 30.1-27 provides for the guardianship of minors; Chapter 30.1-28 provides for guardianships of incapacitated individuals; and Chapter 30.1-29 provides a system of protective proceedings designed to allow the management of estates by a court-appointed conservator.

North Dakota Century Code Chapter 30.1-28 contains provisions regarding the procedural rights of the ward or proposed ward. Section 30.1-28-09 requires that notice be served personally on the ward or proposed ward, that person's spouse, and parents if they can be located within the state. Notice to the spouse or parent, if they cannot be found within the state, may be given by mail or publication. Section 30.1-28-03(7) provides that the proposed ward must be present at the hearing in person unless good cause is shown for the absence. The section also provides that a proposed ward has the right to be represented by counsel and to be personally interviewed by the attorney. Section 30.1-28-04 provides that at a hearing under this chapter, the court is required to hear evidence that the proposed ward is an incapacitated person. The section provides that age, eccentricity, poverty, or medical diagnosis alone is not sufficient to justify a finding of incompetency. The section also provides the standard of proof under which a finding of incapacity may be made.

North Dakota Century Code Section 30.1-28-06 provides that the authority and responsibility of a guardian terminates upon the death of the guardian or ward. Section 30.1-28-07 provides for the conditions under which a guardian may be removed, resign, or under which the guardianship may be terminated. Section 30.1-28-12 provides that a guardian of an incapacitated individual has only the powers and duties specified by the court.

Testimony and Committee Considerations

The committee received testimony and information from a number of individuals and agencies involved in the area of guardianships and the need for guardianship services in the state. The committee also received extensive information from the North Dakota Guardianship Task Force, a group made up of representation from the Department of Human Services, the North Dakota Long Term Care Association, the State Bar Association of North Dakota, the Protection and Advocacy Project, the State Hospital, and numerous guardianship service provider organizations. The task force provided to the committee information regarding community education, petitioning and hearing, resources, guardians, court visitors, indigent individuals in need of guardians, and legislation. The committee's considerations focused on two issues--the guardianship services needs in the state and procedural guardianship issues.

Guardianship Services Needs in the State

The committee received extensive information and testimony from the North Dakota Guardianship Task Force regarding the guardianship services needs in the state. According to the testimony, the Legislative Assembly has enacted a number of significant changes to the state's guardianship laws over the past 16 years, including separating guardianship law from conservatorship law, allowing for limited guardianships, changing the burden of proof from a preponderance of the evidence to clear and convincing evidence, changing the law relating to capacity versus incompetence, and requiring that alternative resource plans be considered. It was noted that the Legislative Assembly rejected the new changes to the Uniform Probate Code that dealt with guardianship in part because it was believed current North Dakota law was better than the proposed revisions to the Uniform Probate Code.

Guardianship, which is a court-appointed relationship between a competent adult and an individual who is not able to handle the individual's affairs, is not an automatic process. The testimony stressed that each individual's situation must be considered carefully and completely. A guardian is required to act in and represent the best interests of the ward, protect the ward and the ward's rights, and ensure that services are provided in the most normal and least restrictive means possible. According to the testimony, much of a guardian's time is spent talking with physicians, case managers, social workers, pastors, family members, or police officers on behalf of wards. It was noted that guardianship should be pursued only when alternative resources such as homemaker services, a representative payee for Social Security benefits, social services support, residential

placements, and in-home services have been tried but are unsuccessful or not appropriate given the circumstances. According to the testimony, a guardian often must make very difficult decisions on behalf of a ward. It was noted that most wards do not have assets. Some wards have Social Security benefits or veterans' benefits that can be used but most are indigent.

The committee also received testimony that there are no statutory standards regarding the qualifications of guardians other than a guardian must be 18 years of age and competent. It was noted that Catholic Charities North Dakota, which is the only organization in the state providing corporate guardianship services, does have policies regarding the qualifications of guardians it hires. It was stressed that there is a need to develop statewide standards for guardians.

The committee received the results of a survey conducted by the North Dakota Guardianship Task Force. The purpose of the survey, which was conducted in early January 2004, was to help determine the need, standards and practices, and funding issues regarding guardianship services in the state. The task force received 141 responses to the survey and categories of respondents included family members, the legal profession, and social services. With respect to the issue of need, 57 percent of the respondents indicated guardianship needs for the populations served are not adequate and 50 percent of the respondents indicated it is difficult to find individuals who are willing to serve as guardians. The results indicated that family members are typically the first choice for guardians, but when a family member is not available, a public administrator assigned by a judge becomes the guardian. It was noted that a number of courts do not have a public administrator. The survey results also indicated that approximately 22 percent of the respondents indicated family members are generally not willing or able to serve as guardians. It was noted that as anticipated, over half of the survey respondents indicated they are seeing changes in the population needing guardianship services. Those changes are most identifiable in the elderly population, followed by individuals with mental illness, physical disabilities, and head and brain injuries. With regard to standards and practices for guardianship, approximately 25 percent of the respondents indicated they do not have an adequate knowledge of guardianship and the guardianship process and when asked if they have experienced any barriers or problems accessing or working with the legal system for guardianship, 35 percent indicated "yes" with the majority citing lack of funds and length of time for the process as barriers. Eighty-three percent of the respondents indicated that there should be minimum standards for individuals serving as guardians. The survey results also indicated the need for guardians to be serving in the best interests of the wards, citing accountability, knowledge of expectations, and to ensure and protect consumer rights and assets as important. Regarding the funding of guardianship services in the state, the survey results indicated that the ward or the ward's family pays for the legal costs of establishing the guardianship; however, when resources are not available, the guardianship establishment costs are being paid by pro bono services, state agencies, counties, the State Hospital, legal aid, nursing homes, charitable organizations, and the petitioner. It was noted that many respondents indicated that if resources are not available, the court is not petitioned and a guardian is not appointed.

To address the issues raised in the testimony regarding the need for guardianship services in the state, the committee considered a bill draft that required the Department of Human Services to contract with an entity to create and coordinate a unified system for the provision of guardianship services to vulnerable adults who are ineligible for developmental disabilities case management services. The system would be required to include a base unit funding level, provider standards, staff competency requirements, an emergency funding procedure to cover the costs of establishing needed guardianships, and guardians and training for guardians. The bill draft also provided for an appropriation of $772,550. Testimony in explanation of the bill draft indicated that the appropriation amount included $247,000 for administrative costs, $40,000 for training and standards, $135,000 for court costs, and $350,000 for guardianship services.

According to the testimony in support of the bill draft, $772,550 is the minimum amount needed to provide training to guardians and guardianship services to 210 needy persons. The testimony indicated that the bill draft would provide guardianship services for those persons who are vulnerable but who are not developmentally disabled. The testimony further indicated that the rules that would be developed would include financial eligibility criteria. The appropriation would pay for guardianship services for an individual at a rate of $5 per day. The services a guardian provides for $5 per day include making legal decisions, securing housing, making health care decisions, and completing applications for services. The estimate that 210 individuals are in need of guardianship services is based upon the guardianship task force survey. Although Catholic Charities North Dakota is the only organization in the state providing corporate guardianship services, the bill draft would allow for organizations other than Catholic Charities North Dakota to contract with the Department of Human Services for the guardianship services.

Procedural Guardianship Issues

During the course of the committee's study of guardianship services needs issues, several issues were raised regarding the guardianship process, including the procedure for the appointment of a successor guardian and the filing of annual reports by guardians and conservators.

Regarding the appointment of a successor guardian, the committee received testimony that state law does not provide for a procedure for the appointment of a successor guardian. There are frequently instances in which the appointment of a successor guardian is necessary, such as the death or resignation of a guardian. It was noted that the procedure for the appointment of a

successor guardian is not the same as the procedure for the creation of the guardianship. When naming a successor guardian, there is not a need to repeat the entire guardianship proceeding because the determination that a guardian is necessary has already been made and therefore that part of the process does not need to be repeated for the appointment of a successor. The testimony indicated that a parent or guardian may name a successor guardian in a will or a coguardian may have been appointed at the time the guardianship was initially created. Testimony received from an attorney who practices in the area of guardianship law indicated that the procedures used by attorneys for the appointment of a successor guardian meet the requirements of guardianship statutes; however, it would be helpful if the statutes specifically provided for the appointment of successor guardians.

The committee considered a bill draft that established a procedure for the current guardian or any interested person to file a motion with the court for the appointment of a successor guardian. The bill draft provided that the notice of motion must include a statement that provides an opportunity for hearing, if requested. If a hearing is not requested, the court may appoint a successor guardian. It was noted that the procedure in the bill draft follows the procedure set forth in the North Dakota Rules of Court Rule 3.2. This rule provides for a motion accompanied by a brief and an affidavit signed by the existing guardian or someone with knowledge of the reasons a successor guardian is needed. The bill draft also contained a provision that provided if the guardian is a public administrator or a corporate guardian that serves more than 10 wards, the guardian is permitted to provide notice by publishing the motion and the notice of motion in a newspaper of general circulation within the judicial district in which the court is located. Because of concerns that publication of a motion regarding the appointment of a successor guardian is a shortcut and a departure from statutory notice requirements, the bill draft was amended to provide that the motion and the notice of motion for a public administrator or a corporate guardian with more than 10 wards may be served by first-class mail.

Testimony in support of the bill draft indicated that the bill draft would be helpful in providing a statutory procedure for the appointment of successor guardians. The testimony indicated that the procedure in the bill draft is the procedure being used by attorneys in the state for the appointment of successor guardians. It was noted that although the procedure in subsection 4 of the bill draft is a departure from current statute, it is economical and at the same time protects the rights of individual wards. It was also noted that less than 10 percent of all successor guardianship appointments are contested. Other testimony indicated that because it is now possible to serve notice by fax and e-mail, allowing service by first-class mail is a satisfactory option.

Testimony in opposition to the bill draft expressed concern about the method of service provided for in subsection 4 of the bill draft. According to the testimony, the method of service--first-class mail--affects the due process of a ward if the ward's guardian has 10 or more wards. It was argued that this change would treat a ward with a corporate guardian differently than a ward with a private-party guardian. It was also argued that because wards of corporate guardians are often members of groups with specific disabilities, to treat such individuals differently than those with private guardians could create a perception of discrimination.

The committee also received testimony regarding the reporting requirements of guardians and conservators. According to the testimony, in about 99 percent of guardianship and conservatorship cases, the court requires an annual report; however, the requirement is not statutory. In addition, the testimony indicated that each judge has different practices for the filing and approval of reports causing a lack of predictability in the current system.

The committee considered a bill draft that provided for an annual report requirement for guardians and conservators. The bill draft also required the State Court Administrator's office to develop and provide a form that may be used to fulfill reporting requirements.

Testimony in support of the bill draft indicated that the bill draft would make it clear that the filing of an annual report is not the same as court approval of the report. It was noted that the bill draft makes it clear that court approval requires notice.

Testimony from the State Court Administrator's office indicated that the Council of Presiding Judges has not been satisfied with the handling of annual reports. It was noted that this bill draft is an attempt to clarify the procedure and provide direction to judges. According to the testimony, the judiciary is in agreement with moving forward with this idea. It was also noted that a standardized form would give information to the judges in a uniform format and make it easier to spot irregularities.

One committee member expressed concern that there has not been any harm identified which creates a need for this legislation. It was noted that requiring annual reports would take judicial discretion out of the process.

Recommendations

The committee recommends Senate Bill No. 2028 to require the Department of Human Services to contract with an entity to create and coordinate a unified system for the provision of guardianship services to vulnerable adults who are ineligible for developmental disabilities case management services. The system is required to include a base unit funding level, provider standards, staff competency requirements, the use of an emergency funding procedure to cover the costs of establishing needed guardianships, and guardians and training for guardians. The bill also provides for an appropriation of $772,550.

The committee recommends Senate Bill No. 2029 to establish a procedure for the current guardian or any interested person to file a motion with the court for the appointment of a successor guardian.

The committee recommends Senate Bill No. 2030 to provide for an annual report requirement for guardians and conservators. The bill draft also requires the State Court Administrator's office to develop and provide a form that may be used to fulfill reporting requirements.

VULNERABLE ADULT ABUSE AND NEGLECT STUDY

Background

Federal Law on Vulnerable Adult Abuse and Neglect

Federal laws on child abuse and domestic violence provide services and shelters for victims, but there is no comparable federal law on vulnerable adult abuse. The federal Older Americans Act (42 U.S.C. 3001 et seq., as amended) provides definitions of elder abuse and authorizes the use of federal funds for the National Center on Elder Abuse and for certain elder abuse awareness, training, and coordination activities in states and local communities but does not fund adult protective services or shelters for abused older individuals.

Vulnerable Adult Protective Services

All 50 states and the District of Columbia have enacted legislation authorizing the provision of vulnerable adult protective services. Generally, these vulnerable adult protective services laws establish a system for the reporting and investigation of abuse and for the provision of social services to help victims and ameliorate the abuse. In most jurisdictions these laws pertain to abused adults who have a disability, vulnerability, or impairment as defined by state law, not just to older individuals.

These statutes vary widely in the age at or circumstances under which a victim is eligible to receive protective services; the definition of abuse; types of abuse, neglect, and exploitation that are covered; classification of the abuse as criminal or civil; reporting (mandatory or voluntary); investigation responsibility and procedures; and remedies for abuse.

Some state vulnerable adult protective services laws only relate to "domestic abuse," which is the abuse of individuals who reside in the community, while other vulnerable adult protective services laws also include individuals who reside in long-term care facilities, known as "institutional abuse." Each state defines long-term care facility differently; moreover, some states include other types of institutions, such as mental health facilities, in their statutes as well.

In some states in which the vulnerable adult protective services law covers only individuals who reside in the community, a separate law addresses institutional abuse. As with the vulnerable adult protective services laws, institutional abuse statutes create a mechanism for reporting, investigating, and addressing incidents of elder abuse which occur in long-term care facilities or other facilities covered under the law.

Long-Term Care Ombudsman Program

Additionally, all states and the District of Columbia have laws authorizing a long-term care ombudsman program that is responsible for advocating on behalf of long-term care facility residents who experience abuse, violations of their rights, or other problems. The program is mandated in each state as a condition of receiving federal funds under the Older Americans Act. The ombudsman program is an integral part of the systemic response to institutional elder abuse. The program's purpose is to investigate abusive situations when responding to complaints within a facility and then, if appropriate, make a referral to a vulnerable adult protective services program, a law enforcement agency, or the agency responsible for licensing and certifying such facilities. Moreover, in some states, the ombudsman program fulfills the role of adult protective services and has the legal authority to investigate and respond to abuse occurring within long-term care facilities.

Criminal Laws

An increasing number of states are passing laws that provide explicit criminal penalties for various forms of vulnerable adult abuse and neglect. Legislatures are also signaling their intent that elder abuse be treated as a crime in other ways. For example, some vulnerable adult protective services laws include a provision stating that elder abuse may be prosecuted criminally, while others define certain acts, such as sexual abuse, in the same words or by reference to definitions that are used in the criminal laws. In those states in which there is not a specific statute or provision authorizing criminal prosecution for elder abuse, a jurisdiction's basic criminal laws, such as battery, assault, theft, fraud, rape, manslaughter, or murder, can be used to prosecute someone who has committed an act of abuse against an older individual. Some legislatures have enacted enhanced penalties for certain crimes against older individuals.

North Dakota Law

North Dakota Century Code Chapter 50-25.2 provides for an adult protective services program. Section 50-25.2-02 requires the Department of Human Services, with the advice and cooperation of county social services boards, to develop, administer, and implement a program of protective services for vulnerable adults. Section 50-25.2-01 defines a "vulnerable adult" as an adult who has a substantial mental or functional impairment. This section defines "abuse" as the willful act or omission of a caregiver or any other person which results in physical injury, mental anguish, unreasonable confinement, sexual abuse or exploitation, or financial exploitation to or of a vulnerable adult. "Neglect" is defined as the failure to provide essential services necessary to maintain the physical or mental health of a vulnerable adult. The section defines "financial exploitation" as the taking or misuse of the vulnerable adult's resources or property by means of undue influence, breach of fiduciary responsibility, deception, harassment, criminal coercion, theft, or other unlawful or improper means.

North Dakota Century Code Section 50-25.2-03 establishes a procedure for the voluntary reporting of abuse and neglect. The section provides that a person who has reasonable cause to believe that a vulnerable adult has been subjected to abuse or neglect or who observes a vulnerable adult being subjected to conditions or circumstances that reasonably would result in abuse or neglect may report the information to the Department of Human Services or to an appropriate law enforcement agency.

North Dakota Century Code Section 50-25.2-14 provides that the department and county social services boards are not required to implement or enforce the chapter with respect to any region, area, or county of the state if the Legislative Assembly does not provide an appropriation to support the implementation and enforcement of the chapter within that region, area, or county. Except for some subsequent funding of two of the three initial demonstration sites, state general funds have not been appropriated to fund this program. Federal funding made available through the Older Americans Act is used to fund vulnerable adult protective services in each of the state's human service regions.

In 1998 each regional human service center began developing elder services units, which are responsible for vulnerable adult protective services as well as other services.

North Dakota law also provides for criminal penalties for certain acts against vulnerable adults. North Dakota Century Code Section 12.1-31-07.1 provides that the exploitation of a disabled adult or vulnerable elderly adult is a Class A felony if the value of the exploited funds, assets, or property exceeds $100,000; a Class B felony if the value of the exploited funds, assets, or property exceeds $20,000 but does not exceed $100,000; and a Class C felony if the value of the exploited funds, assets, or property is in excess of $1,000 but does not exceed $20,000. Section 12.1-31-07.2 provides that in a criminal proceeding in which a disabled adult or vulnerable elderly adult is a victim, the court and the state's attorney are required to take appropriate action to ensure a speedy trial to minimize the length of time the disabled adult or vulnerable elderly adult must endure the stress of involvement in the proceedings.

Testimony and Committee Considerations

The committee received testimony and reviewed information submitted by the Department of Human Services, a representative of the North Dakota Medical Association, and community organizations that provide services to vulnerable adults and the elderly. The committee focused its discussions on whether there is a need for the mandatory reporting of vulnerable adult abuse and neglect.

The committee received testimony from the Aging Services Division of the Department of Human Services regarding the vulnerable adult abuse and neglect issues in the state. The department reported that from October 2002 to September 2003 the state's eight regional human service centers received 555 information and referral calls regarding vulnerable adult services and spent 7,922 hours providing case services. Of these referrals, 29 percent were made by medical or home health sources, 21 percent from agency sources, 19 percent from family sources, 19 percent from community sources, 7 percent from legal or judicial sources, and 5 percent were self-reported. Self-neglect, which accounted for 63 percent of the referrals, was the most common reason for a referral; neglect accounted for 17 percent; abuse accounted for 11 percent; and suspected financial exploitation accounted for 9 percent of the referrals. Seventy-two percent of the incidents reported were made in regard to individuals who were 60 years old or older, 60 percent of the individuals were female, 78 percent of those individuals were single, 54 percent lived alone, and 29 percent had some type of dementia. The testimony indicated that self-neglect often occurs with vulnerable adults who live alone. It was noted that vulnerable adults who live alone may make choices different from those other people may make. According to the testimony, the elderly are often forced to choose between buying medicine or buying food. The testimony indicated that mandatory reporting of vulnerable abuse and neglect would only be effective if adequate resources were made available. It was noted the sole source of funding for vulnerable adult protection services and the ombudsman program in the state is from the federal Older Americans Act. It was reported that about $170,000 is received annually under the federal Act. It was noted that the limited funds only allow for crisis intervention services. According to the department, the current system of voluntary reporting is working well but there is a need for more public education.

Testimony from representatives of the medical community indicated that physicians are generally aware of the voluntary reporting law and the reporting process. According to the testimony, clinics in the state are treating vulnerable adults who are being referred to them by protective agency personnel. It was noted that some physicians in the state would prefer that the voluntary reporting mechanism remain in place, but that there is a need for more clarity and education to ensure the proper functioning of the referral process. The testimony also indicated that the enactment of any mandatory reporting requirement may have a negative effect on the willingness of patients or their caregivers to seek timely medical care. It was noted that any law mandating certain persons to report vulnerable adult abuse and neglect must include appropriate safeguards, such as reporter immunity, and that the system must be adequately structured and funded to function as necessary.

Testimony from AARP North Dakota and a senior adults program indicated that whatever the state's reporting situation is, it must be supported by sufficient public information and education. The testimony emphasized that persons must be educated on how to report, to whom a report should be made, and what information should be reported. It was noted that if the Legislative

Assembly determines that certain persons should be mandated to report vulnerable adult abuse and neglect, the legislation must provide adequate funding for investigation, enforcement, and services. It was also noted that because mandatory reporting could potentially be abused, any legislation that mandates reporting must include penalties for making false reports. The testimony indicated that a significant element in preventing and treating the problem is sufficient access to in-home services such as home-delivered meals and home health care. The testimony stressed that education is the key component to reporting vulnerable adult abuse and neglect. The testimony also indicated that many professionals, such as physicians, are reporting suspected abuse and neglect, due in part to the ethical standards of certain professions. The testimony also stressed that in providing adult protective services, any attempt to remedy the situation must be done by using the least-restrictive methods.

The committee considered a bill draft that appropriated $50,000 to the Department of Human Services for the purpose of implementing an education and awareness campaign to inform the public about vulnerable adult abuse and neglect, including the manner in which incidents of adult abuse, neglect, and exploitation may be reported. Testimony in support of the bill draft indicated the $50,000 would be a proactive and preventative way of dealing with the issue. The testimony indicated that the funding would be used for an education campaign and to set up a toll-free number for callers to report incidents and to receive information. According to the testimony, the funds currently distributed to the regional human service centers are used for client services only, not for education or media campaigns.

Recommendation

The committee recommends House Bill No. 1029 to appropriate $50,000 to the Department of Human Services for the purpose of implementing an education and awareness campaign to inform the public about vulnerable adult abuse and neglect, including the manner in which incidents of adult abuse, neglect, and exploitation may be reported.

LAW ENFORCEMENT TRAINING NEEDS STUDY

Background

The chief components of the state law enforcement system in North Dakota include the Highway Patrol, various divisions within the Attorney General's office, game wardens, and park rangers.

Highway Patrol

Founded in 1935, the North Dakota Highway Patrol enforces state law relating to the protection and use of the highways in the state and the operation of motor and other vehicles on North Dakota highways. In addition, the Highway Patrol is required to exercise general police powers over all violations of law committed on state property; to provide security and protection for the Governor, the Governor's immediate family, and other officers next in order of succession to the office of Governor, as deemed adequate and appropriate; and to provide security and protection for both houses of the Legislative Assembly while in session, as deemed adequate and appropriate. The Governor appoints the Highway Patrol superintendent. In addition to serving as administrative head of the Highway Patrol, the superintendent has been responsible, since 1981, for the operation, maintenance, and administration of the Law Enforcement Training Center.

Law Enforcement Training Center

The Law Enforcement Training Center in Bismarck was established following a 1969 appropriation of $169,000, funded by a one-time 50-cent charge on driver's licenses. The Highway Patrol superintendent appoints the director of the training center. The peace officer training conducted at the center is required to meet the criterion and curriculum standards of the state Peace Officer Standards and Training Board.

The Law Enforcement Training Center, which was built in 1971, conducts training for all law enforcement agencies in the state. The center provides basic and advanced training for all law enforcement officers at no charge to them or their agencies for tuition, room, or board. The original center consisted of two classrooms, dormitory rooms (40 beds), and a dining hall. In August 1997 the Ralph Wood addition opened. This project added a multipurpose room, four dormitory rooms, two classrooms, and an administrative office to the center.

In 2002 three basic training classes graduated as well as a Highway Patrol recruit class. Sixty-eight peace officers earned their Peace Officer Standards and Training Board licensure certification through attendance at the center. A total of 1,011 law enforcement personnel received training in 57 sessions at the center in 2002. The center also is frequently used by other groups and state agencies for training, meetings, and events.

Bureau of Criminal Investigation

The Bureau of Criminal Investigation was established in 1965 "as a bureau of the state government, under the Attorney General." Among the statutory duties of the Bureau of Criminal Investigation are the assisting of federal, state, and local law enforcement entities in the establishment and maintenance of a complete system of criminal investigation, serving as the state central repository for the collection, maintenance, and dissemination of criminal history record information; aiding in establishing a system for apprehension of criminals and detection of crime; and on request, assisting and cooperating in investigation, apprehension, arrest, detention, and conviction of alleged felons as well as other duties. The Attorney General acts as superintendent of the bureau and has "absolute control and management of the bureau." The Attorney General appoints the chief of the bureau.

Criminal Justice Training and Statistics

North Dakota Century Code Section 12-62-01 provides that criminal justice training and the collection of statistics must be conducted by the Attorney General. Attorney General is to conduct the training of peace officers and sheriffs and gather, analyze, and disseminate information regarding the state's criminal justice system.

Drug Enforcement Unit

The Drug Enforcement Unit, under the Attorney General, has as its duty the enforcement of the Uniform Controlled Substances Act and other laws dealing with controlled substances. The Attorney General designates the director of the Drug Enforcement Unit.

Game and Fish Department

North Dakota Century Code Title 20.1 provides the general structure of North Dakota game and fish law. The state Game and Fish Department director has primary responsibility for enforcing these laws, with this responsibility also being delegated to game wardens. As the chief law enforcement officer, the Attorney General is also assigned responsibility in this area. That duty also is assigned to state's attorneys, sheriffs, and other peace officers.

Park Rangers

North Dakota Century Code Chapter 55-08 establishes the Parks and Recreation Department to plan and coordinate government programs encouraging the full development and preservation of existing and future parks, outdoor recreation areas, and nature preserves. The Governor appoints the director of the department. The director is authorized to appoint departmental employees to have peace officer status on property administered by the department. In addition, the Attorney General, state's attorneys, sheriffs, and other peace officers are also responsible for enforcement of Chapter 55-08.

Testimony and Committee Considerations

The committee received extensive testimony from the Attorney General's office, the Peace Officer Standards and Training Board, the Highway Patrol, and numerous law enforcement officers regarding the law enforcement training needs in the state. The committee's considerations focused on the state's basic law enforcement training needs, advanced law enforcement training needs, and proposed legislation.

Basic Law Enforcement Training Needs

According to testimony received from the Peace Officer Standards and Training Board, state law requires all new law enforcement officers to complete basic training. There are two providers of basic training in the state. The Highway Patrol operates the Law Enforcement Training Center in Bismarck at which officers who have been hired can receive the 11-week basic training at no cost to the employing agency. In addition, Lake Region State College in Devils Lake offers a program that provides basic training to persons who wish to become law enforcement officers but who have not yet been hired by a law enforcement agency. The tuition for the Devils Lake program is approximately $3,000. According to the testimony, these two programs combined graduate between 75 and 100 officers per year.

The state's approximately 1,800 licensed law enforcement officers are required to earn a minimum of 60 hours of continuing education every three years. The Highway Patrol and the Bureau of Criminal Investigation provide training to officers across the state. It was noted that all instructors are required to be certified to teach classes to law enforcement officers. To be certified, the officers must meet minimum requirements of experience and knowledge as well as complete an instructor development course. According to the testimony, the Highway Patrol and the Bureau of Criminal Investigation provide training within the restrictions of their respective budgets. It was noted that the Peace Officer Standards and Training Board, which sets the training standards, has no funding source other than the licensing fees of officers. These fees generate approximately $9,000 per year. It was also noted that with this training being provided, a local agency must send the officers to the training and cover any associated costs, such as mileage and expenses, as well as providing for necessary shift coverage. It was emphasized that the primary training issue is the inability of officers to access the training. According to the testimony, for many agencies the training is not easily accessible and the agencies do not have the money or additional personnel to send their officers to training. While the Interactive Video Network can be used for some of the training, much of law enforcement training is hands-on, demonstration-type training that needs to be done in the presence of a trained law enforcement instructor.

According to the testimony, the law enforcement training issues of the state involve both finances and personnel management. Thirty-six counties employ one-third of all county law enforcement officers while the remaining 17 counties employ two-thirds of county law enforcement officers. Thirty-six counties that have a sheriff's department staff of five or fewer employees often find it very difficult to send officers away for training and find it difficult to send their trained officers to other areas to conduct training.

The superintendent of the Highway Patrol reported that in 2003, 55 training courses were held at the training center for 1,156 students. A total of 55 new officers from various agencies satisfactorily met the minimum training requirements to serve as law enforcement officers in the state. The training academy has one field training officer. In 2003 this officer conducted training at 43 locations other than Bismarck. For the 2003-05 biennium $1,016,000 was appropriated for the operation, maintenance, and staffing of the training academy. Within this amount $50,000 was appropriated for funding specialized training. According to the testimony, although not

every officer needs the same level of training, there are basic training needs that all officers must have.

The testimony also indicated that homeland security concerns have created more law enforcement duties and responsibilities.

Advanced Training Needs

The committee received testimony that although the state's basic law enforcement training needs are being met by the Law Enforcement Training Center in Bismarck and Lake Region State College in Devils Lake, there is a great concern about the inability to fund adequate inservice and advanced training. The testimony indicated that the majority of the trainers who teach the highly specialized courses are brought in from out of state. According to the testimony, it is important that law enforcement officers receive advanced training in various areas of expertise. Examples of areas of expertise include homicide investigations, computer crimes, tactical operations, supervision and management, criminal investigations, and firearms maintenance. These training sessions are offered throughout the state, but they occur infrequently. The majority of local law enforcement agencies in the state do not have any money budgeted for continued or advanced training. Many of the smaller agencies in the state rely on the generosity and assistance of larger departments to provide quality instruction for them. Any type of advanced training, it was noted, is almost nonexistent for the smaller agencies.

The committee also received testimony regarding the use of the Interactive Video Network for law enforcement training. Statewide there are about 250 Interactive Video Network sites and this number is growing. Eleven of these sites are at the colleges and universities. However, the majority of the remaining sites are controlled by the various kindergarten through grade 12 telecommunications consortiums around the state. The most significant limitation of the system is scheduling. The university and public school sites are generally booked for one-hour slots at least 30 but no more than 90 days in advance. In these locations it is difficult to get a large time block, such as four hours, in multiple locations unless it is in the summer. The local government sites are more flexible and some longer training sessions have been scheduled by using only county sites. There is a practical limitation of 10 sites for a single training, after which the degradation in the signal reduces transmission quality. While significant time and travel costs can be saved, training at 10 or fewer locations still requires some people to leave their counties, resulting in the need for backup staffing. It was noted, however, as more local sites are installed, this medium will become more flexible and hopefully more available to law enforcement agencies.

The committee also received information from the Peace Officer Standards and Training Board regarding a proposed training plan. To develop the plan the board surveyed all law enforcement agencies in the state requesting information on their unfunded training needs. Fifty-three percent of the agencies responded to the survey and indicated a need for training in approximately 60 specific topics that fall within five general areas, including general police subjects; accident investigation; criminal investigation; specialized courses; and supervision, management, and administration. It was noted that refresher training in high-liability areas such as search and seizure and use of force appear necessary as well. The plan is a work in progress and will need to be modified as time goes by. It was also noted that the plan is very ambitious and all the training proposed in the plan may not be able to be completed in one biennium. The training in the training plan would be in addition to the training that is done now and would only be offered to those officers who need that particular type of training. It was emphasized that every law enforcement officer does not need to attend every advanced class. According to the testimony, $912,225 per biennium would be needed to fund the training proposed in the training plan.

Proposed Legislation

The committee considered a bill draft that would have provided for the creation of a law enforcement training fund to be funded by a motor vehicle insurance premium tax. The law enforcement training fund would have been administered by the Peace Officer Standards and Training Board. Testimony in support of the bill draft indicated that 16 states use motor vehicle license fees to fund law enforcement training.

The Insurance Commissioner provided testimony regarding the bill draft. North Dakota currently collects 1.75 percent on motor vehicle premiums. It was noted that because of the retaliatory effect of the tax structure in relation to other states with higher percentages, the state would not necessarily capture all of the money provided by the increase in the premium tax. Of the $386 million in premiums currently being collected, a .12 percent increase would result in $451,000 in increased tax; however, when considering the retaliatory provisions of state tax law, about $245,000 would be collected from the increase. It was noted that these types of increases can put domestic companies at a disadvantage.

Committee members expressed concerns that there are too many taxes already imposed on motor vehicles and that if advanced law enforcement training is a legitimate cause, it should be funded using general fund money.

The committee considered a bill draft that provided for a $400,000 general fund appropriation to the Highway Patrol for the purpose of providing training for law enforcement officers and other emergency services providers.

Testimony in support of the bill draft indicated that the funds would be used to provide additional advanced training for the state's law enforcement officers. It was noted that although there may be some joint training with emergency services providers, the funds would predominantly be used by law enforcement officers. The

committee received no testimony in opposition to the bill draft.

Recommendation

The committee recommends Senate Bill No. 2031 to appropriate $400,000 from the general fund to the Highway Patrol for the purpose of providing training for law enforcement officers and other emergency services providers.

EMPLOYMENT CONDITIONS STUDY

Background

As result of an April 14, 2004, opinion of the Attorney General, the chairman of the Legislative Council directed the interim Criminal Justice Committee to study the employment conditions issues contained in NDCC Section 34-06-05, including those surroundings or conditions which may be detrimental to an employee's health or morals. In addition to the issue raised in the opinion regarding the applicability of this section to smoking in the workplace, the Legislative Council chairman directed the committee to review the entire statute and any other issues that the language of the statute may raise. Section 34-06-05 provides:

> **Employment of employees under certain conditions illegal.** It is unlawful to employ in any occupation within this state:
> 1. Employees for unreasonably long hours.
> 2. Employees under surroundings or conditions, sanitary or otherwise, which may be detrimental to their health or morals.
> 3. Employees for wages which are less than the state minimum wage.
> 4. Minors for unreasonably low wages.

North Dakota Century Code Section 34-06-05

North Dakota Century Code Chapter 34-06 contains the statutory provisions governing the wages, hours, and conditions of labor for employees in the different occupations in which they are employed within this state. This chapter was originally enacted in 1919 as House Bill No. 184. This 1919 bill provided that the purpose of the Act was "to protect the lives and health and morals of women and minor workers." Section 3 of the bill provided:

> It shall be unlawful to employ women or minors in any occupation within the State for unreasonably long hours and it shall be unlawful to employ women or minors in any occupation within the State under such surroundings or conditions sanitary or otherwise, as may be detrimental to their health, or morals; and it shall be unlawful to employ women in any occupation within the State for wages which are inadequate to supply the necessary cost of living and to maintain them in health; and it shall be unlawful to employ minors in any occupation within the State for unreasonably low wages.

This section, which was most recently amended in 1965, is codified as North Dakota Century Code Section 34-06-05.

Attorney General's Opinion

In an April 14, 2004, letter opinion, the Attorney General addressed the issue of whether NDCC Section 34-06-05 applies to smoking in workplaces. The Attorney General stated that the prohibition in subsection 2 of Section 34-06-05 against subjecting an employee to surroundings or conditions that may be detrimental to the employee's health is one way the section could apply to tobacco smoke in the workplace. The opinion cited several studies that have analyzed whether environmental tobacco smoke is harmful, including one that specifically looked at smoke in the workplace. According to the opinion, the Labor Commissioner has the authority to investigate and ascertain employee labor conditions in the state and, in light of that authority, the Labor Commissioner has the authority to ascertain whether tobacco smoke in workplaces is detrimental to the employees' health and to address the matter through the rulemaking process. The opinion added that the prohibition in subsection 2 of Section 34-06-05 may create a private cause of action against an employer who subjects employees to tobacco smoke in the workplace.

North Dakota Legislation Regulating Smoking

Historical Legislation

North Dakota has a long history of tobacco-related legislation dating back to 1890. The first tobacco-related legislation was passed on February 13, 1890, during the state's first legislative session. The legislation prohibited the sale of tobacco products to a minor under the age of 16 years. That first bill in 1890 was followed by the introduction of tobacco control legislation in nine legislative sessions between 1895 and 1913. During the 1895 legislative session, House Bill No. 39 was passed making it illegal for any person in the state to sell or expose for sale any cigarettes of any kind or form. In addition, Senate Bill No. 141 prohibited the manufacture, sale, or use of adulterated cigarettes and the sale of any tobacco products to minors. The bill defined a minor as a person under the age of 17 years. In 1913 the Legislative Assembly attempted to completely eliminate cigarette use in the state by passing House Bill No. 67, which prohibited the "sale, manufacture, bartering, or giving away of any cigarettes, or cigarette papers . . . ." At the urging of Governor A. G. Sorlie, the 19th Legislative Assembly (1925), by Senate Bill No. 61, repealed the 1913 law. The bill, however, did declare it unlawful to provide tobacco products to any person under the age of 21 years.

Workplace Smoking Legislation

The Legislative Assembly has also considered a number of bills dealing with smoking in the workplace. In 1995, House Bill No. 1367, which proposed to prohibit smoking in all facilities providing children's services,

including educational institutions and private workplaces, was introduced. Following a recommendation of a conference committee that the House accede to the Senate amendments, the bill failed to pass the House. In 1997, House Bill No. 1198 would have prohibited smoking, with certain exceptions, in any indoor place of public access and any publicly owned building or office. The bill also would have placed restrictions on smoking in nonpublic workplaces. The bill failed to pass the House.

In 2003, House Bill No. 1408 would have eliminated smoking in most public places and private workplaces with the exception of bars and private clubs. The bill failed to pass the House. Also in 2003, House Bill No. 1174 would have prohibited tobacco use and sales in the state. The bill failed to pass the House.

Current North Dakota Laws Regarding Smoking

North Dakota law contains a number of provisions regulating smoking and the use of tobacco in public and other places. North Dakota Century Code Section 12-47-21 prohibits the use, possession, and delivery of tobacco products by an inmate in the state's correctional facilities. This section provides that any person who possesses or delivers tobacco products to an inmate in a state correctional facility is guilty of a Class B misdemeanor. North Dakota Century Code Section 12.1-31-03 prohibits the sale of tobacco to minors and the use of tobacco by minors.

The laws with respect to smoking in places of public assembly are contained in NDCC Chapter 23-12. Section 23-12-10 provides:

> Smoking is not permitted outside of designated smoking areas in places of public assembly as provided in this section. Smoking areas may be designated only by proprietors of privately owned buildings or by public officials having general supervisory responsibility for government buildings. No smoking area may be designated in a place in which smoking is prohibited by the state fire marshal. A sign must be posted in any designated smoking area which states "Designated Smoking Area" or words to that effect.
>
> Except as otherwise provided, designated smoking areas in a place of public assembly may not occupy more than fifty percent of the total area available to the public and must be situated to minimize smoke drift. The proprietor of a food establishment with the seating capacity for fifty or more persons may temporarily, during the course of daily business, expand the designated smoking area beyond fifty percent of the total available area if the smoking area becomes fully occupied and the additional space needed for the expansion is vacant or available.

Section 23-12-09 defines "place of public assembly" as:

> a. Enclosed theaters; auditoriums; gymnasiums; elevators; libraries; vehicles used in public transportation; rooms in which persons are confined as a matter of health care, including the waiting room, restroom, lobby, or hallway of a hospital, nursing home, rest home, or other health care institution or facility, and waiting areas in all public transportation terminals.
> b. Any building or other enclosed structure owned or leased by the state, its agencies, or political subdivisions, and all public education buildings.
> c. Each portion of a building or enclosed structure that is not included in this subsection if it has the seating capacity for fifty or more persons and is available to the public, including restaurants, food service establishments, dining rooms, cafes, cafeterias, or other rooms used primarily for the service of food, regardless of whether the establishments serve alcoholic beverages.
>
> The term does not include private, enclosed rooms of residence, establishments licensed primarily or exclusively to sell alcoholic beverages for consumption on the premises, including private and fraternal organizations, or areas used for the service of alcoholic beverages and which are physically separate rooms within food service establishments.

Section 23-12-10.2 designates the State Department of Health as the agency responsible for receiving reports or complaints regarding violations of Section 23-12-09. The section also provides that state agencies, including the Fire Marshal, State Department of Health, Department of Human Services, and Office of Management and Budget, with jurisdiction over places of public assembly may enforce the smoking regulations. Section 23-12-11 provides that any person with supervisory responsibility over a place of public assembly who willfully fails to comply with the smoking regulations is subject to a maximum fine of $100 per violation.

Another statute that prohibits smoking is contained in NDCC Section 50-11.1-02.2. This section provides that "[s]moking is not permitted in an early childhood facility at any time during which a child who receives early childhood services from that facility is present and receiving services at that facility."

Local Smoking Control Efforts

The first local tobacco control ordinance was passed by the Grand Forks City Council in 1990. The ordinance restricted the placement of vending machines to locations that were not accessible to minors. In 1992 a vending machine restriction ordinance that limited the placement of cigarette vending machines to establishments licensed to sell alcoholic beverages was passed in Bismarck. Similar ordinances were passed in Devils

Lake, Fargo, Jamestown, Minot, Valley City, and Williston.

On July 15, 1997, Jamestown became the first community in North Dakota to introduce a smoke-free ordinance. The ordinance would have prohibited smoking in public places, including elevators, restrooms, lobbies, public transportation, all public areas in private businesses and nonprofit organizations, libraries, museums, theaters, sports arenas, convention halls, and restaurants. Restaurants would have been allowed to have a separately enclosed and ventilated smoking area that did not exceed 50 percent of the seating capacity of the establishment. Bars, clubs, and bowling alleys were not included as public places. Violation of the ordinance would have been punishable by a fine of up to $500. The fine would have been applicable to the owner of the establishment and the smoker. The ordinance was defeated on August 4, 1997, with a 4-to-1 vote by the Jamestown City Council.

On February 26, 2001, a smoke-free restaurant ordinance was introduced at a meeting of the Minot City Council. The ordinance was passed by the city council with a 10-to-4 vote on April 2, 2001, with the ordinance scheduled to go into effect on January 1, 2002. The final ordinance mandated smoke-free restaurants but allowed restaurant owners to build fully enclosed, separately ventilated smoking rooms. Bars, fraternal organizations, banquet and convention center space for special occasions, bingo parlors, and bowling alleys were exempt from the ordinance. A referral attempt in July 2001 resulted in the ordinance being upheld by a vote of 55 to 45 percent.

In May 2004 restaurant owners in Carrington made the decision to ban smoking in their restaurants. The smoke-free initiative was not the result of any city ordinance but rather the operators of Carrington's six restaurants decided on their own to ban smoking.

In June 2004 Dickinson voters defeated a proposed city smoking ban by a vote of 2,200 votes against the initiated ordinance and 1,393 votes in favor. Under the proposed ordinance, smoking would have been prohibited in all Dickinson businesses except those with a liquor license at the time of the vote. The proposed ordinance also would have banned smoking within 25 feet of any nonsmoking establishment.

In July 2004 Fargo city commissioners approved an indoor public workplaces smoking ban. The ban will take effect either July 1, 2005, or at the same time as bans in surrounding communities, whichever comes first. A July 14, 2004, article in the *Grand Forks Herald*, reported that the Grand Forks Tobacco Free Coalition is supporting an ordinance for Grand Forks which is similar to the one passed in Fargo.

Three initiated measures regarding smoking appeared on the general election ballot in Fargo in November 2004. Ordinance No. 1, which called for a smoking ban that excluded truck stops and businesses with Class A or AB liquor licenses, received 19,582 "yes" votes and 23,897 "no" votes; Ordinance No. 2, which called for a smoking ban that excluded truck stops and enclosed bar areas that restrict people under age 21, received 24,986 "yes" votes and 18,966 "no" votes; and Ordinance No. 3, which called for a complete indoor, workplace smoking ban with an exemption for cigar bars, received 24,489 "yes" votes and 20,296 "no" votes. According to an October 4, 2004, letter opinion of the Attorney General, if conflicting municipal initiated measures are approved by the electors, the one receiving the highest number of "yes" votes prevails.

Two measures regarding smoking in public places appeared on the general election ballot in West Fargo in November 2004. Ordinance No. 1, which called for a smoking ban that exempted bars, received 5,639 "yes" votes and 3,291 "no" votes. Ordinance No. 2, which called for a complete smoking ban with an exemption for tobacco retail stores, received 5,160 "yes" votes and 3,667 "no" votes.

Testimony and Committee Considerations

The committee received extensive testimony from the Attorney General, Labor Commissioner, State Department of Health, the American Lung Association, North Dakota Medical Association, a physician, American Cancer Society, American Heart Association, North Dakota League of Cities, North Dakota Hospitality Association, local business owners, and local officials regarding the study. The committee studied the employment conditions issues contained in NDCC Section 34-06-05 and the statute's applicability to smoking in the workplace. In its study of Section 34-06-05, the committee focused on the following areas--legal concerns, health concerns, business and financial concerns, and proposed legislation.

Legal Concerns

According to the Attorney General, the clear and obvious interpretation of NDCC Section 34-06-05(2) is that the Labor Commissioner has the authority to investigate and ascertain employee labor conditions in the state and, in light of that authority, the Labor Commissioner has the authority to ascertain whether tobacco smoke in workplaces is detrimental to the employees' health and to address the matter through the rulemaking process. Section 34-06-05(2) may create a private cause of action against an employer who subjects employees to tobacco smoke in the workplace. The testimony indicated that there have been a number of lawsuits seeking damages because of workplace smoking, but even without NDCC Section 34-06-05, it is likely that a person could sue for damages caused by workplace smoking.

North Dakota Century Code Chapter 34-06 is the chapter of state labor law that provides authority for the Labor Commissioner to investigate conditions of employment and to adopt rules prescribing standards for wages and working conditions in the state. Under this authority, labor commissioners have adopted the rules that are contained in the department's Minimum Wage and Working Conditions Order. The rules establish the state minimum wage and employment standards for the

payment of overtime, breaks, paystubs, and vacation pay. However, no rules have been adopted under the chapter establishing standards for workplace health and safety. The Labor Commissioner historically has relied on standards for workplace health and safety established and enforced by the federal Occupational Safety and Health Administration as well as health and safety programs at the State Department of Health and Workforce Safety and Insurance. The Attorney General's opinion places the issue of exposure to secondhand tobacco smoke in the context of the Labor Commissioner's authority to establish and enforce standards for wages and working conditions, but the Labor Commissioner testified that this issue is most appropriately addressed by the Legislative Assembly as the policy-making body of the state and that the legislative process would provide the most appropriate forum for public discussion of the matter. It was noted that there have been no regulations adopted regarding morality. According to the testimony, morality issues may also be open to a private cause of action. If complaints are received, the Labor Commissioner has the authority to investigate employment conditions regarding the morality portion of the statute. A committee member noted the statute is vague and either needs to be changed or administrative rules must be developed before anyone could be charged with a violation of the statute.

The committee also received testimony from the North Dakota League of Cities regarding local ordinances and efforts in the state regarding smoking in the workplace. According to the testimony, a survey of the league's members indicated that of the 36 cities that responded to the survey, 19 have policies in place regarding smoking in city-owned buildings, 14 responded that they have no policies in place regarding smoking, 2 cities responded that they have passed smoking ordinances, and 1 reported a pending initiated measure regarding smoking in businesses. According to the testimony, the league supports local control of the issue.

Testimony from Workforce Safety and Insurance indicated that workers' compensation rates charged are commensurate with the risk. However, the agency was not aware of any other states that use workplace smoking as a specific risk factor. The testimony indicated that Workforce Safety and Insurance does not track claims based on smoking injury grounds. The agency was aware of one occasion in which a secondhand smoke claim was accepted. It was noted that there are substantial proof problems with secondhand smoke claims. When rates are set, the agency looks at the loss history for that group and for that employer. Allowing or not allowing smoking in the workplace is not specifically considered in setting rates. The agency offers rate discounts for employers that conduct health and safety programs and, therefore, it is possible that an employer that voluntarily adopted a smoke-free workplace policy could receive a discount, but it must be shown that the policy would actually result in a reduction in claims.

The committee received testimony regarding secondhand smoking litigation. The first secondhand smoke lawsuit was filed in 1976. Since the early 1980s, more than 420 cases involving exposure to secondhand smoke have been identified. According to the testimony, the only North Dakota lawsuit on secondhand smoke involved a pregnant woman who alleged that secondhand smoke caused her illnesses. In that case, the jury decided the county was negligent under the state law that requires public places to have designated smoking areas if smoking is allowed and the pregnant woman was entitled to 5 percent, or $650, of the $13,000 in awarded damages.

Health Concerns

The committee received testimony from the State Department of Health regarding the health risks and financial costs associated with smoking. The health hazards of secondhand smoke, also known as environmental tobacco smoke, are well-documented. The Centers for Disease Control and Prevention has reported that secondhand smoke is a leading cause of preventable death in this country, killing 35,000 nonsmokers in the United States each year. In North Dakota, from 80 to 140 adults and children die from secondhand smoke each year. The Environmental Protection Agency reports that smoke from the burning end of a cigarette contains over 4,000 chemicals and 42 carcinogens. The Environmental Protection Agency reports that there is no safe level of exposure to environmental tobacco smoke and that an estimated 3,000 lung cancer deaths in nonsmokers each year are the result of secondhand smoke. Numerous studies have documented the health effects associated with exposure to secondhand smoke, including lung cancer and nasal sinus cancer, health disease mortality, and eye and nasal irritation in adults. Health effects in children include acute lower respiratory tract infections; asthma induction and exacerbation; chronic respiratory symptoms; middle ear infections; and developmental effects, including low birth weight and sudden infant death syndrome. In North Dakota, 56 low birth weight babies each year can be attributed to secondhand smoke costing $378,247, 667 cases of asthma are attributable to secondhand smoke exposure costing $540,903, and 218 cases of ear infection attributable to secondhand smoke costing $107,778. Two of the 10 sudden infant death syndrome deaths in the state are attributable to smoking exposure. Restaurant and bar workers, who typically have greater exposure to secondhand smoke, are at 50 to 100 percent increased risk of lung cancer.

According to the testimony, there is growing support for smoke-free environments in North Dakota. A survey commissioned by the North Dakota Public Education Task Force on Tobacco in spring 2003 found the majority of North Dakotans think smoking should not be allowed in schools, public facilities, entertainment arenas, private businesses, and restaurants. As of July 2004, 12 states had adopted state smoke-free workplace laws, 11 states include restaurants in their smoke-free workplace laws, and 7 states include bars. California and Utah were the first states to implement smoking bans in 1994. Since 2002, 10 additional states

have implemented various combinations of 100 percent smoke-free provisions. Legislation is being considered in five additional states.

A representative of the North Dakota Tobacco Policy Coalition testified that the organization supports enforceable public policies that broaden the scope and strengthen the standards of current state law while preserving the right of local governments to adopt measures more restrictive than state law. According to the testimony, in North Dakota in 2002, nearly 60,000 workers were exposed to smoke in the workplace. It was noted that it is often argued that a person who works in a smoking environment can choose to work elsewhere. However, it would be difficult for thousands of workers in rural North Dakota to find other work. According to the testimony, while 75 percent of white collar workers are covered by smoke-free policies in the United States, only 43 percent of the country's food preparation and service occupation workers benefit from this level of protection. It was also noted that bar and restaurant workers have three to six times more exposure to secondhand smoke than other workers and a 50 percent increase in lung cancer. It was pointed out that if an employee works in a business that allows smoking, such as a manufacturing plant, it is estimated the nonsmoking employee will be exposed to secondhand smoke that is equivalent to smoking six cigarettes in an eight-hour shift.

A physician testified that the physicians of the state have long supported initiatives to reduce the death and disease associated with the use of tobacco products by youth and adults. According to the testimony, NDCC Section 34-06-05 indicates a long-standing concern by state lawmakers for the health of employees in the workplace. It was noted that secondhand smoke in the workplace is detrimental to the health of employees. The Journal of the American Medical Association in 2001 reported that exposure to secondhand smoke for as few as 30 minutes can impair coronary circulation in a nonsmoker. Because of the detrimental impacts of secondhand smoke in the state's patient population, North Dakota physicians have played an active part in efforts of local communities to adopt clean indoor air ordinances, including efforts in Minot, Dickinson, West Fargo, and Fargo. The United States Surgeon General's 2000 report on reducing tobacco use found that clean indoor air laws that prohibit smoking have been shown to decrease daily tobacco consumption and to increase smoking cessation among smokers. The testimony indicated that while the North Dakota Medical Association supports stronger state laws pertaining to the restriction of smoking in public places, physicians recognize that local communities should not be preempted from adopting clean indoor air ordinances that are more restrictive than state law.

A representative of the American Heart Association testified that smoke-free air laws have a strong, documented, positive impact on helping smokers quit and on preventing children and adolescents from ever starting. It was noted that more than 32 percent of the country's population is now protected by a local or state 100 percent smoke-free indoor air law. According to the testimony, smoke-free air is becoming a public health benchmark and expectation with economic development and tourism implications. Other testimony indicated that broad support exists for smoke-free policies. It was argued that no one should have to choose between a job and good health.

Committee members expressed concerns about the availability of smoking cessation programs in the state. According to the testimony, more than 60 smoking cessation programs have been established in this state and smoking cessation programs are available to state and county employees. It was noted that it usually takes an individual five to seven attempts before the individual has long-term success with smoking cessation. It was also noted that the state does not have a residential treatment facility for smoking cessation but there is such a program at the Mayo Clinic in Minnesota. The testimony also indicated that there are local tobacco prevention coordinators on all the state's reservations.

Business and Financial Concerns

The committee received testimony from a representative of the North Dakota Hospitality Association who testified that businesses will be affected by state law and local ordinances on this issue. It was argued that in a free market and free enterprise system, the business owner should be able to decide whether or not to allow smoking in the establishment. It was noted that just like employees, no one is forced to patronize a business. The testimony emphasized that business would be adversely affected by eliminating smoking, especially in bars. According to the testimony, the association supports reasonable smoking restrictions in restaurants, but bars should be exempt from any smoking prohibition. It was emphasized that it is important to be careful about statewide bans because not all businesses in the state are the same. It was noted that in some restaurants, 40 to 50 percent of revenue comes from smokers. The testimony noted that about 75 percent of the state's hotel rooms are nonsmoking.

Testimony from a Bismarck business owner stated that the lounge in the hotel he owns recently went smoke-free and, as a result, the lounge had experienced a 25 percent increase in sales. It was noted that while it is important for the free enterprise system to work, when employees' health is at issue, some government involvement may be necessary. It was suggested that the issue may need to be put to a vote of the people. It was noted that there is a market for smoke-free restaurants and bars and people are looking for those environments. It was also noted that if all bars were smoke-free, those bars currently smoke-free would lose their advantage. It was speculated that while no one wants to take that first step, if all bars and restaurants went smoke-free, business would maintain a status quo.

A Minot city alderman provided testimony regarding smoke-free family dining ordinance passed in Minot in 2001. It was noted that the ordinance was referred to a

vote of the people and the ordinance was upheld by a vote of 55 to 45 percent. According to the testimony, following the effective date of the ordinance, business was basically status quo. However, many businesses are now reporting that business has increased from the time before the smoking restrictions became effective. It was noted that only two businesses in the city have opted to maintain a separately ventilated eating area. According to the testimony, the smoking ordinance has been a positive move for Minot and after being in effect for two years, 17 percent of the people still oppose the ordinance and 80 percent support it. Seventy-eight percent of those surveyed said the rights of employees take precedence over the rights of smokers. It was stated that it is time for the Legislative Assembly to take a look at smoke-free workplaces.

Other testimony regarding the Minot ordinance indicated that it is the only ordinance in place in the state that provides for worker protection from secondhand smoke. A study conducted by Minot State University indicated that there is a 96 percent rate of compliance with the ordinance in Minot. A second Minot State University study evaluated the economic impact of the smoke-free ordinance on restaurant business in Minot. In this study, sales tax data from the five years before the implementation of the ordinance was compared to the sales tax data from the year following implementation. The study found no negative economic impact as a result of the ordinance.

During the course of the study, the committee reviewed the Minot smoking ordinance as well as smoking regulation laws of New York, California, and Delaware. The committee also reviewed the tobacco tax revenue collected in North Dakota for the years 1998 through 2003. In 2003 the total amount of cigarette and tobacco tax revenue collected totaled $20,687,895.73; the collections in 1998 were $23,978,505.89. It was noted that in North Dakota the tobacco tax is collected from the wholesalers, not the retailers. Because of this method of tax collection, although tobacco tax revenues have decreased, the decreases in tobacco tax revenues could not necessarily be attributed to local smoking ordinances that restrict smoking in public places.

The committee also received information regarding the tobacco tax revenue collected in California since the implementation of that state's smoke-free legislation in 1994. The information indicated that California has seen a steady decrease in tobacco sales and consumption over the past 40 years and that the implementation of the smoke-free legislation in 1994 did not appear to accelerate that steady decrease. It was noted that a 50-cent per pack tax increase in California in 1998 raised the per pack tax to 87 cents. The North Dakota tobacco tax is 44 cents per pack.

Proposed Legislation

The committee considered a bill draft regarding smoking restrictions in places of public access, publicly owned buildings or offices, and nonpublic workplaces. The bill draft prohibited smoking in places of public access and in workplaces, with some exceptions. The bill draft also provided that the smoking prohibition does not apply to places of public access operated by a social, fraternal, or religious organization when the place is being used solely by the organization's members or their guests or families; guest rooms in lodging facilities; establishments licensed primarily or exclusively to sell alcoholic beverages for consumption on the premises; private clubs; and certain separately enclosed smoking areas. The bill draft provided for a $100 penalty for violations with a maximum of $500 for second and subsequent offenses. The language in the bill draft is substantially the same as the language contained in House Bill No. 1408 (2003), which failed to pass the House.

The committee also considered several amendments to the bill draft. The amendments would have removed the exemption in the bill draft for establishments licensed primarily or exclusively to sell alcoholic beverages for consumption on the premises. It was argued that bar employees are 1.5 times more at risk to secondhand smoke-related illnesses than are other workers. It was pointed out that in an eight-hour shift, a bar employee is exposed to the amount of secondhand smoke that is equivalent to smoking 1.5 to 2 packs of cigarettes. It also was noted that bar employees are the employees who are the most exposed to secondhand smoke but who have the least potential for being able to find alternative employment and are also less likely to have health insurance. Other testimony in support of the amendments to the bill draft argued to be fair, the smoking ban should apply to all employees. It was emphasized that if the goal is to protect workers, all workers should be protected. The committee did not adopt the proposed amendments.

Testimony from the Labor Commissioner regarding the bill draft indicated the bill draft placed the authority and obligation to enforce the proposed restrictions with the State Department of Health which is logical considering that the State Department of Health has authority to enforce smoking restrictions in places of public assembly. According to the testimony, regardless of which state agency is given the authority and obligation to enforce any workplace smoking restrictions, it is extremely important that this significant public policy issue be addressed by the Legislative Assembly. It was noted that the authority for any state agency to make rules must be clear with well-defined parameters.

Other testimony on the bill draft indicated that smoking regulations would be difficult to enforce and would not protect all workers. It was recommended that the portion of the bill draft that provides for exceptions for certain business establishments be deleted. It was noted that while the bill draft being considered by the committee was a step in the right direction, it would not protect all workers from secondhand smoke.

Recommendation

The committee recommends House Bill No. 1030 to prohibit smoking in places of public access, publicly

owned buildings or offices, and nonpublic workplaces. The prohibition does not apply to places of public access operated by a social, fraternal, or religious organization when the place is being used solely by the organization's members or their guests or families; guest rooms in lodging facilities; establishments licensed primarily or exclusively to sell alcoholic beverages for consumption on the premises; private clubs; and certain separately enclosed smoking areas. The bill provides for a $100 penalty for violations with a maximum of $500 for second and subsequent offenses.

REPORT OF ATTORNEY GENERAL

The committee 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 the state. According to the report, 135 meth-amphetamine labs have been busted so far this year. This is about half of the number at the same time last year. The focus of drug control and enforcement efforts in the state has been on prevention. In the legislation proposed for the next session, it is likely that there will be requests for more treatment options. It was reported that the state is not going to be able to afford enough prison beds for all the drug offenders, thus creating a need to fund more treatment for first-time offenders. According to the report, some of the ideas enacted in 2003, such as limiting the number of packages of cold medication that can be sold to a customer, seem to be making a difference. It was noted that most of the meth-amphetamine used in the state comes from out-of-state sources. According to the Attorney General, the three additional drug agents that have been added over the last two legislative sessions have greatly helped drug enforcement efforts.

ECONOMIC DEVELOPMENT COMMITTEE

The Economic Development Committee was assigned three studies. House Concurrent Resolution No. 3072 directed a study of possible methods of growing North Dakota's population, including approaches to decreasing outmigration and increasing inmigration and reviewing how other states are dealing with related population issues. The basis of the study included recognition of problems related to the state's low rate of population growth, concerns relating to the changing demographics of the state's population, and the need to consider population centers from which to recruit individuals to move to the state. House Concurrent Resolution No. 3051 directed a study of economic development efforts associated with and including establishment of a Red River Valley business and technology development zone and methods through which programs receiving funding from the United States Department of Agriculture rural economic area partnership, empowerment zone, enterprise community, and champion community programs can be enhanced. House Bill No. 1504 directed a study of the state's business climate, including the creation of an index of key objective measurements that address the state's competitiveness with other states, the consideration of methods of creating business partnerships with North Dakota Indian tribes in order to increase primary sector business growth in the state, and active participation in the activities of the Primary Sector Business Congress. In conducting the study the Legislative Council was directed to create a Primary Sector Business Congress. The purpose of the congress was to assist in the business climate study, evaluate the impact of existing state economic development programs on primary sector businesses, identify methods to increase primary sector business job growth in the state, and prioritize for the Legislative Council the state's primary sector business economic development programs and initiatives.

The Legislative Council also assigned the committee with responsibility under North Dakota Century Code (NDCC) Section 40-63-03 to receive annual reports from the Division of Community Services on renaissance zone progress; under Chapter 18, Section 9, of the 2003 Session Laws to receive reports annually during the 2003-04 interim from the Commissioner of Commerce regarding specified economic goals and associated benchmarks; and under Section 15-10-41 to receive a presentation from the State Board of Higher Education on definitions and eligibility criteria regarding its centers of excellence program relating to economic development.

Committee members were Representatives Rick Berg (Chairman), Tracy Boe, Byron Clark, Donald L. Clark, Mark A. Dosch, Mary Ekstrom, Glen Froseth, Nancy Johnson, Jim Kasper, George Keiser, Eugene Nicholas, Kenton Onstad, Ken Svedjan, and Don Vigesaa and Senators Dick Dever, Duaine C. Espegard, Tony S. Grindberg, John O. Syverson, and Ryan M. Taylor. Representative Byron Clark was a member of the committee until his resignation on January 2, 2004.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2004. The Council accepted the report for submission to the 59th Legislative Assembly.

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 projects within each of the renaissance zones, including the:

- Status of each project, as either approved or completed.
- Nature of the credits and exemptions applicable to each project.
- Amount of the financial institution tax exemption for each project.
- Amount of the state tax impact for each project.
- Amount of the property tax impact for each project.
- Amount of the historical tax credits for each project.
- Dates of local and division approval for each project.
- Dates of the five-year tax credit period for each completed project.

As part of the second of the annual reports, the committee received testimony the Division of Community Services had approved 17 zones; had approved a total of 195 zone projects, with 97 of those projects not yet completed; and had recognized five cities with a renaissance fund organization, with $1,475,000 in tax credits approved for investors in a renaissance fund origination, leaving a balance of $1,025,000 from the first $2,500,000 of credits.

The Division of Community Services did not recommend any changes to the renaissance zone program. The committee received testimony new renaissance zones continue to be created across the state and the zones appear to be working under existing law. The division continues to encourage small communities to participate in the program.

The committee toured the Fargo Renaissance Zone and received testimony from individuals in support of the economic benefit opportunities related to the Fargo Renaissance Zone. The committee received testimony the Fargo Renaissance Zone has positively impacted the area included in the zone as well as the area surrounding the zone.

Conclusion

Although the committee makes no recommendation with respect to the renaissance zone program, the committee expressed a need for future annual renaissance zone reports to include information regarding

whether renaissance zone projects have resulted in increased property tax assessment values, in order for the legislative assembly to better gauge the effectiveness of the program.

Commissioner of Commerce Economic Goals and Benchmarks Annual Reports

Background

Chapter 18, Section 9, of the 2003 Session Laws requires the commissioner of the Department of Commerce to monitor and report annually during the 2003-04 interim to either the Budget Section or an interim committee designated by the Legislative Council regarding the following North Dakota economic goals and associated benchmarks:

1. Develop unified efforts for economic development based on collaboration and accountability:
   a. Site selection ranking of the North Dakota Department of Commerce.
   b. Share of local economic development organizations participating in statewide marketing strategy.
2. Strengthen cooperation between the University System, economic development organizations, and private businesses:
   a. Academic research and development expenditures as percentage of gross state product.
   b. Industry research and development expenditures as percentage of gross state product.
3. Create quality jobs that retain North Dakota's workforce and attract new high-skilled labor:
   a. Net job growth.
   b. New private sector businesses per 100,000 residents.
   c. Average annual wage.
   d. Net migration.
4. Create a strong marketing image that builds on the state's numerous strengths, including workforce, education, and quality of life.
   a. Positive national and out-of-state media exposure (favorable mentions).
   b. Number of North Dakota Department of Commerce web site hits per month.
   c. Number of leads generated by the North Dakota Department of Commerce.
5. Accelerate job growth in sustainable, diversified industry clusters to provide opportunities for the state's economy:
   a. Net job growth in manufacturing.
   b. Net job growth in business services.
   c. New private sector businesses in manufacturing.
   d. New private sector businesses in business services.
   e. Number of utility patents per 100,000 residents.
6. Strengthen North Dakota's business climate to increase international competitiveness:
   a. Gross state product (annual growth rate).
   b. Venture capital investments (thousands).
   c. Merchandise export value (per capita).

The department, in cooperation with Job Service North Dakota, the Department of Human Services, and the University System, is to include in its report the number of individuals trained and the number who became employed as a result of each department's workforce development and training programs, including the state's investment, the areas of occupational training, the average annual salary of those employed, and the average increase in earnings 12 months after completion of training.

Testimony and Committee Considerations

The committee received annual reports from the Commissioner of Commerce regarding specified economic goals and associated benchmarks. The following is a summary of the 2004 report, with the target figure in regular font (top) and the preliminary estimates as of June 15, 2004, in bold font (bottom):

	2000	2001	2002	2003	2004
Goal 1: Develop a unified front for economic development based on collaboration and accountability					
Percent of local economic development organizations participating in state marketing strategy				30% **85%**	40% **45%**
Site Selection magazine ranking on North Dakota's Department of Commerce				**N/A**	**N/A**
Goal 2: Strengthen linkages between the state's higher education system and economic development organizations and private businesses					
Academic research and development expenditures as a percent of gross state product	**0.36%**	**0.45%**	0.4% **N/A**	0.4% **N/A**	0.4%
Industry research and development expenditures as a percent of gross state product	**0.45%**	**1.83%**	0.2% **0.77% (est.)**	0.4% **N/A**	.05%
Goal 3: Create quality jobs that retain North Dakota's current workforce and attract new skilled labor					
Net job growth	**3,900**	**1,950**	1,800 **150**	1,400 **2,850**	1,700
New private sector businesses	**116**	**(27)**	174 **206**	77 **331**	105

	2000	2001	2002	2003	2004
Average annual wage	**$24,683**	**$25,707**	$26,252 **$26,550**	$27,389 **$27,629**	$28,688
Per capita personal income	**$25,109**	**$25,830**	**$26,852**	**$29,204**	
Net migration		2,088 **(6,456)**	662 **(3,916)**	1,302 **(1,334)**	
Population change		**(4,797)**	**(2,374)**	**(74)**	
Goal 4: Create a strong marketing image on the state's numerous strengths, including workforce, education, and quality of place					
Positive national/out-of-state media exposure (favorable mentions)	**2**	**7**	**5**	10 **12**	20 **17 (ytd)**
Number of North Dakota Department of Commerce web site hits per month	**N/A**	**16,539**	10,920 **18,470**	11,466 **24,974**	12,039 **27,080 (ytd)**
Number of leads generated by the North Dakota Department of Commerce		**40**	140	160 **99**	175 **58 (ytd)**
Goal 5: Accelerate job growth in sustainable, diversified industry clusters to provide opportunities for the state's economy					
Net job growth in manufacturing	**1,100**	**150**	300 **(350)**	200 **(250)**	200
Net job growth in business services	**550**	**(250)**	400 **1,150**	200 **750**	300
Net job growth in leisure and hospitality	**300**	**50**	**450**	**150**	
Net job growth in health care services	**450**	**550**	**650**	**830**	
New private sector businesses in manufacturing	**25**	**(6)**	5 **(7)**	3 **7**	3
New private sector businesses in business services	**61 (est.)**	**62**	19 **97**	9 **83**	14
Number of utility patents per 100,000	**13.2**	**15.1**	17.9 **11.4**	19.5 **8.6**	21.2
Goal 6: Strengthen North Dakota's business climate to increase global competitiveness					
Gross state product (annual growth)	**8.6%**	**2.4%**	2.3% **4.9% (est.)**	3.6% **4.2% (est.)**	3.5% **4.3% (est.)**
Venture capital investments (thousands)	**$6,054**	**$1,017**	$700 **$0**	$2,734 **$14,500**	$5,658 **2,000 (ytd)**
Merchandise export value (per capita based on 2002 census = 642,200)	**$975**	**$1,255**	$1,306 **$1,338**	$1,329 **$1,330**	$1,368

Additionally, the committee received a copy of the September 2002 North Dakota Economic Development Foundation strategic plan. The six strategic goals of the plan are:

1. Develop a unified front for economic development based on collaboration, accountability, and trust.
2. Strengthen linkages between the state's higher education system, economic development organizations, and private businesses.
3. Create high-quality jobs to retain North Dakota's current workforce and attract 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 committee received testimony that specific industries being targeted by the Department of Commerce include tourism, information technology, value-added agriculture, and advanced manufacturing and energy. Although it is difficult to limit to a single source or manner, the department is working on pursuing outlets to promote North Dakota as a small-business home. The department is continually reviewing and trying to refine target industry areas and is constantly looking at targeted job growth. The Commissioner of Commerce testified that the goals and associated benchmarks are valuable tools and need to be used to guide economic development in the state.

Recommendations

The committee recommendations relating to the specified economic goals and associated benchmarks are addressed in the **Recommendations** portion of the **Primary Sector Business Congress Activities** portion of this report.

State Board of Higher Education Centers of Excellence Report

Background

North Dakota Century Code Section 15-10-41 provides:

Centers of excellence.

1. The state board of higher education shall establish a centers of excellence program relating to economic development consistent with the purpose under subsection 2. The board shall designate centers of excellence. A designation by the board of a center of excellence within the economic development category does not preclude the board or a higher education institution from designating a center of excellence in an academic or service area. Centers of excellence relating to economic development include the North Dakota state university center for technology enterprise and the university of North Dakota center for innovation.

   Before January 1, 2004, the board, in consultation with the North Dakota economic development foundation and with private sector input, shall establish definitions and eligibility criteria for centers of excellence relating to economic development. The board shall present the definitions and eligibility criteria for the centers of excellence relating to economic development to an interim committee designated by the legislative council. The North Dakota economic development foundation may identify and recommend high priority centers of excellence relating to economic development for consideration by the state board of higher education for future budget requests.
2. The purpose of the program is to develop and engage strategies for science and technology research and development, commercialization, entrepreneurship, infrastructure, growth and expansion of knowledge-based industries, and activities in the state to develop innovative approaches that expand the gross state product; to assist efforts to attract private and federal assistance for science and technology research and development and for commercialization in growth clusters most likely to increase the gross state product; to increase collaboration among state, federal, and private research and development and technology commercialization organizations in the state; to strengthen the leadership and support of the national science foundation experimental program to stimulate competitive research programs and to encourage partnerships with other state institutions for expanded efforts to stimulate economic growth in identified industry clusters; to provide leadership in science and technology policy at a regional, a national, and an international level; and to create employment opportunities for North Dakota university system graduates. Identified industry clusters include advanced manufacturing, aerospace, energy, information and technology, tourism, and value-added agriculture.
3. The state board of higher education shall allocate funds from appropriations for undesignated centers of excellence relating to economic development based on the criteria established and shall report on such allocations, in partnership with the North Dakota economic development foundation, to the budget section. A recipient of funds under this section shall use the funds to enhance capacity, enhance infrastructure, and leverage state, federal, and private sources of funding. Funds awarded under this section may not be used to supplant funding for current operations or academic instruction or to pay indirect costs. The board may award funds under this section to research universities, university-related foundations, and public institutions that are located in the state which demonstrate the potential to deliver expertise and service to industry clusters that will contribute to the gross state product. A recipient of funds under this section which is an institution of higher education under the control of the board of higher education or which is a nonprofit university-related foundation shall:
   a. Provide the board of higher education with documentation of the availability of two dollars of matching funds for each dollar of funds awarded under this section as a condition of eligibility for receipt of funds under this section; and
   b. Provide the board of higher education, governor, and North Dakota economic development foundation with annual reports for four fiscal years following receipt of the funds.

Sections 17 and 19 of House Bill No. 1019 (2003) provided that $200,000 of the discretionary grants line item for the Department of Commerce appropriation is for the purpose of contracting with a private organization for conducting a marketing and image-building campaign for the Red River Valley Research Corridor during the second year of the biennium. Additionally, the bill provided the Department of Commerce is to provide a centers of excellence grant from the North Dakota Development Fund, Inc., of $1,250,000 to the North Dakota State University Center for Technology Enterprise and of $800,000 to the University of North Dakota

Center for Innovation. The department was to provide these grants on October 1, 2003.

Testimony and Committee Considerations

A representative of the State Board of Higher Education presented the centers of excellence report. Since enactment of NDCC Section 15-10-41 in 2003, a University System task force and a North Dakota Economic Development Foundation task force merged to form the Joint Committee on Economic Development Centers of Excellence. This joint task force, with input by nearly 50 individuals in the primary economic sectors in the state, identified program needs and opportunities for focusing the resources of the North Dakota University System.

The following definitions and selection criteria were established and approved by the Joint Committee on Economic Development Centers of Excellence and then approved by the State Board of Higher Education:

- "Economic development center of excellence" means an area of concentration and a critical mass of knowledge and expertise associated with one or more North Dakota University System colleges or universities which meet the overall intent and the majority of the following criteria:

  Creates high-value private sector employment opportunities in the state;

  Promotes growth and expansion of knowledge-based industries and/or the development of new products (commercializes technology), high-tech companies, and skilled jobs in the state, i.e., uses academic and research excellence capacity to support economic development;

  Provides for public/private sector involvement and partnerships;

  Leverages other funding;

  Stimulates new wealth and increases gross state product;

  Fosters and practices entrepreneurship;

  Encourages cooperation and collaboration among the North Dakota University System colleges and universities;

  Links to targeted industry clusters (advanced manufacturing, energy, information technology, tourism, and value-added agriculture);

  Addresses depopulation and related issues; and

  Includes provisions for becoming self-sustaining.

- "Targeted economic development center of excellence" means a desired area of concentration and critical mass of knowledge and expertise associated with one or more North Dakota University System colleges or universities that when fully developed will meet the same criteria designated for an established center of excellence.

Using these newly developed definitions and criteria, the State Board of Higher Education, taking into account recommendations by the North Dakota Economic Development Foundation, selected two economic development centers of excellence projects from six proposals. The two projects selected were the Bismarck State College National Energy Technology Training and Education Center for $300,000 and the Williston State College Oil Field Training Center for $100,000, both subject to the campuses being able to meet the $2 to $1 match requirement under Section 15-10-41(3)(a).

The committee received the following information for each of the nine economic development centers of excellence:

- The amount of state, federal, and private funding.
- The related private sector party, if able to be identified.
- A brief description, including purpose and planned outcomes.
- Progress, including estimated completion dates.
- How the center's activity will be sustained beyond the 2003-05 biennium.
- Which of the statutory criteria the center meets.

A representative of the State Board of Higher Education testified that hopefully each of the state's institutions of higher education will be able to identify an avenue by which to pursue an economic development center of excellence, but the selection criteria needs to be input-based and needs to evolve to an outcome-based approach that evaluates factors, such as whether the economic development center of excellence actually creates jobs. Therefore, some flexibility will be utilized when considering expectations related to research, academic relationships, and capacity to attract external funding, but all economic development centers of excellence will need to become self-funding.

The committee received testimony that the issue of whether an economic development center of excellence needs to be research-based was an area of intense discussions during task force meetings. If a center of excellence is required to be research-based, the location of centers of excellence would be limited to the two research-based universities. The task force ultimately decided the legislative intent of the economic development centers of excellence program was to have more than two locations for centers of excellence. Therefore, whether a center is research-based is one criteria to consider, but not the only or the determining criteria.

Addressing the committee's concern that there may be confusion between economic development centers of excellence under NDCC Section 15-10-41 and centers of excellence that are not related to economic development but that excel in specific academic or service areas, a representative of the State Board of Higher Education testified that the board will try to further clarify this distinction.

Recommendations

The committee recommendations relating to the centers of excellence economic development are addressed in the **Recommendations** portion of the **Primary Sector Business Congress Activities** portion of this report.

POPULATION STUDY

Legislative Background

2003 Legislation

Legislative measures introduced during the 2003 legislative session which specifically or closely addressed population included:

- Senate Bill No. 2393, which increased the duties of the North Dakota Economic Development Foundation to include recommending and monitoring legislation and initiatives to strengthen and impact the state's economy and population.
- House Bill No. 1019, the appropriation for the Department of Commerce, which created a centers of excellence program.
- Senate Bill No. 2030, which allowed the Department of Commerce to retain a limited amount of the money received as subscriptions, commissions, or fees from the department's career guidance and job opportunities web site.
- House Bill No. 1199, which would have created a Department of Commerce Division of Population Growth. The bill failed to pass the House.

Previous Studies

During the 2001-02 interim, the Commerce Committee was charged with studying workforce training and development programs in the state, 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, and the feasibility and desirability of consolidating in a single agency the funding and administration of those programs. The committee recommended Senate Bill No. 2030 (2003).

During the 1999-2000 interim, the Commerce and Labor Committee was charged with studying the economic development efforts in the state. As part of this study the committee studied population retention and demographics, including receipt of reports from Project Back Home, CareerLink North, and the North Dakota State University Data Center. This committee recommended Senate Bill No. 2032 (2001), which created the Department of Commerce by consolidating the Division of Community Services, Department of Economic Development and Finance, and Tourism Department and which created the North Dakota Commerce Cabinet. Additionally, the committee recommended House Bill No. 1043, which would have provided for state payment of certain student loans, but failed to pass the Senate.

Recent Population Initiatives

In addition to a wide variety of organizations that have addressed population growth in the state and region, such as the North Dakota Rural Development Council, Northern Great Plains, Inc., and the Heartland Center for Leadership Development, there have been several population growth initiatives. Initiatives that have addressed the issue of population growth include the Great Plains Population Symposium Project, Saving North Dakota Roundtable, New Economy Initiative, and the Youth Investment Initiative in Support of Initiated Measure No. 3.

Great Plains Population Symposium Project

The Great Plains Population Symposium Project held a three-day national policy conference in Bismarck in October 2001 and held a two-day state and local policy conference in Dickinson in April 2002. The purpose of the project was to investigate the continuing depopulation of the rural Great Plains and to raise the nation's awareness of the facts and ramifications relating to the emptying of the nation's vast central region. The project was led by Dickinson State University in collaboration with researchers at North Dakota State University, Colorado State University, University of Montana, and Iowa State University. The project was sponsored by federal legislation and was supported by a grant from Congress.

Saving North Dakota Roundtable

On January 9, 2003, on the North Dakota State University campus, 31 people ages 21 to 34 took part in a "Saving North Dakota" roundtable discussion cohosted by *The Forum* (Fargo) and the Associated Press Managing Editors group. *The Forum* reported that roundtable members targeted five major areas of discussion--human rights, arts and culture, technology, marketing, and community and economic development. Additionally, on January 30, 2003, several of the panelists met with legislative leaders and Governor John Hoeven to discuss these major topics.

New Economy Initiative

The New Economy Initiative is a public-private initiative that was coordinated by the Greater North Dakota Association beginning in 2000. The goals of the initiative continue to be to mobilize North Dakotans to develop and implement solutions to some of the problems plaguing the state's business climate. The initiative works through the creation of action teams and industry clusters.

Youth Initiative Committee Initiated Statutory Measure No. 3

Initiated statutory measure No. 3, supported by the Youth Initiative Committee, would have created a Bank of North Dakota-administered program providing for partial reimbursement of student loan payments for employed North Dakota residents under 30 years of age who graduated from accredited postsecondary schools.

Reimbursements would have been limited to $1,000 per eligible resident per year for not more than five years. The measure would also have provided an income tax credit of up to $1,000 for employed North Dakota residents from 21 through 29 years of age, for up to five years. The measure was rejected by voters at the November 5, 2002, general election.

Testimony and Committee Considerations

The committee received testimony regarding detailed population data from a representative of the State Data Center which focused on what was presented as the four hard demographic truths about the future:

1. Population consolidation.
2. Loss of young adults and families.
3. Aging population.
4. Shifting labor force.

The committee received testimony that in looking at the net domestic migration rates, North Dakota, South Dakota, Wyoming, and Kansas are all sharing the same experience. Additionally, even though the state of Texas had a growth rate of more than 22 percent, over 50 percent of the counties in Texas have experienced a population loss. There is a difference between looking at the state rate of population and the county rate of population because a state's counties can experience loss but if the state includes a large metropolitan area, the growth of that metropolitan area can make up for the losses in the counties. One thing that makes North Dakota unique is that North Dakota does not have the large cities most other states have. The population shift in the Great Plains is due in large part to agriculture and technology and this shifting trend has been taking place for more than 50 years.

The committee received testimony that the issue of migration from rural areas to urban areas is a global issue. The situation of the United States can be distinguished from the situation in Europe in that geographically the United States is larger than the countries in Europe and the distance between communities is greater in the United States.

The committee received testimony from a local developer that outmigration is an effect, not a cause. People come or go from a community for jobs and education. Additionally, outmigration is not unique to North Dakota. In reviewing demographic and population statistics, it is important to note that throughout the nation smaller communities statistically have lower average incomes than larger communities and North Dakota is a state comprised of small communities.

Recommendations

The committee recommendations relating to the population study are addressed in the **Recommendations** portion of the **Primary Sector Business Congress Activities** portion of this report.

ECONOMIC DEVELOPMENT EFFORTS STUDY

North Dakota Legislative Background

There has been a significant amount of state legislation and a number of Legislative Council studies relating directly to economic development and economic development programs. The following information regarding legislation and studies is not totally inclusive but includes the recent legislation most directly related to economic development.

2003 Legislation

- Section 23 of House Bill No. 1019 provided for the creation of a State Board of Higher Education centers of excellence program to develop and engage strategies for science technology research and development, commercialization, entrepreneurship, infrastructure, growth and expansion of knowledge-based industries, and activities to develop innovative approaches that expand the gross state product. The two centers designated in the bill were the North Dakota State University Center for Technology Enterprise and the University of North Dakota Center for Innovation.
- Sections 17 and 19 of House Bill No. 1019 provided that $200,000 of the discretionary grants line item for the Department of Commerce appropriation was for the purpose of contracting with a private organization for conducting a marketing and image-building campaign for the Red River Valley Research Corridor during the second year of the biennium and for providing specified centers of excellence grants from the North Dakota Development Fund, Inc., of $1,250,000 to the North Dakota State University Center for Technology Enterprise and of $800,000 to the University of North Dakota Center for Innovation.
- Section 25 of House Bill No. 1019 revised the seed capital investment tax credit program.
- House Bill No. 1127 expanded the lending sources from which a student seeking assistance under the technology occupations student loan program may obtain a student loan.
- House Bill No. 1426 allowed political subdivisions to create commerce authorities.
- House Bill No. 1207 allowed political subdivisions to establish municipal port authorities or regional port authorities.
- Senate Bill No. 2393 increased the duties of the North Dakota Economic Development Foundation to include recommending and monitoring legislation and initiatives to strengthen and impact the state's economy and population.
- House Bill No. 1423 expanded the rural growth incentive city program to include grants related to location of new businesses within the city.
- Senate Bill No. 2335 authorized the Bank of North Dakota to invest in North Dakota

alternative and venture capital investments and early stage capital funds.

- Senate Bill No. 2259 revised the law relating to renaissance zones, including authorizing renaissance fund organizations to provide financing to businesses outside a renaissance zone.
- House Bill No. 1457 authorized a renaissance zone city of over 5,000 population to expand the zone to a maximum size of 35 blocks, based upon population.

2001 Legislation

- Senate Bill No. 2032 created the Department of Commerce, North Dakota Commerce Cabinet, and North Dakota Economic Development Foundation.
- House Bill No. 1400 created the rural growth incentive program.
- House Bill No. 1283 created the technology occupations student loan program administered by the State Board of Higher Education.
- Senate Bill No. 2349 increased the maximum amounts of loans available under the beginning entrepreneur loan guarantee program.
- House Bill No. 1413 expanded the seed capital investment tax credit 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. 2033 revised the renaissance zone law.
- House Bill No. 1460 increased the tax credits available for renaissance zone investments.

1999 Legislation

- House Bill No. 1443 created the quadrant system for workforce training.
- Senate Bill No. 2242 created the beginning entrepreneur loan guarantee program.
- House Bill No. 1141 eliminated the requirement that the Department of Economic Development and Finance have a Division of Science and Technology.
- House Bill No. 1492 allowed for the establishment of renaissance zones in cities.
- 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.

2001-02 Interim Studies

- The Higher Education Committee studied the State Board of Higher Education's implementation of the performance and accountability measures report required by Senate Bill No. 2041 (2001), including information on education excellence, economic development, student access, student affordability, and financial operations.
- The Higher Education Committee studied 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.
- The Commerce Committee 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, and assessment of the needs of business and industry, the research and development efforts of the North Dakota University System, and reviewed the investments of the State Investment Board and the feasibility and desirability of investing a portion of these funds in North Dakota.
- The Commerce Committee 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 Commerce Committee 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 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.
- The Commerce Committee received a report from the Securities Commissioner 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.

1999-2000 Interim Study

The Commerce and Labor Committee studied the economic development efforts in the state, including the provision of economic development services statewide and the related effectiveness, the potential for the privatization of the Department of Economic Development and Finance, and the appropriate location of the North Dakota Development Fund, Inc., including the potential transfer of the fund to the Bank of North Dakota.

1997-98 Interim Study

The Commerce and Agriculture Committee studied the economic development functions in this state, 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.

Federal Program Background

There are several federal economic development programs being utilized in the state, including the rural economic area partnership (REAP) zones, rural empowerment zones, rural champion community program, and urban and rural renewal communities. State economic development programs closely related to technology economic development, closely related to economic development with a focus on geographical region, or that have a strong federal link include the renaissance zone program, rural growth incentive program, and manufacturing extension partnership program.

Rural Economic Area Partnership Zones

The United States Department of Agriculture (USDA) has implemented a pilot concept for rural revitalization and community development called rural economic area partnership zones. The USDA reported that "the REAP Initiative was established to address critical issues related to constraints in economic activity and growth, low density settlement patterns, stagnant or declining employment, and isolation that has led to disconnection from markets, suppliers, and centers of information and finance."

In 1995 the first two REAP zones created were the Center of North America Coalition (CONAC) for Rural Development REAP zone and the Southwest REAP zone, both in North Dakota. The CONAC zone consists of Towner, Benson, Pierce, Bottineau, Rolette, and McHenry Counties and the Spirit Lake and Turtle Mountain Indian Reservations. The Southwest REAP zone consists of Billings, Dunn, Golden Valley, Stark, Slope, Hettinger, Bowman, and Adams Counties and the south segment of the Three Affiliated Tribes Indian Reservations. Since 1995 two REAP zones have been established in New York and one zone has been established in Vermont. The USDA reports that the REAP zone status of the two North Dakota REAP zones is scheduled to end September 30, 2005.

State funding for the REAP zones has been combined with the state funding of the champion communities. In 1999 the Legislative Assembly provided the Champion/REAP Alliance $50,000 in matching funds, in 2001 the Legislative Assembly provided $75,000 in matching funds, and in 2003 the Legislative Assembly, through discretionary funds of the director of the Division of Economic Development and Finance, provided approximately $70,338 in matching funds to assist the programs.

Rural Empowerment Zone

The USDA administers the rural empowerment zone and rural enterprise community programs as part of the community empowerment program, which was enacted into law in August 1993. The first round of designation of three rural empowerment zones and 30 rural enterprise communities was in December 1994; the second round, which was enacted into law by the federal Taxpayer Relief Act of 1997, resulted in the designation of five new rural empowerment zones (one of which is in North Dakota) and 20 new rural enterprise communities; and the third round, which was enacted into law by the federal Consolidated Appropriations Act of 2001, resulted in the designation of two new rural empowerment zones. The funding, benefits, and eligibility of rural empowerment zones and enterprise communities vary according to which of the three rounds the designation was made.

The Griggs-Steele empowerment zone was a Round II designation that includes all of Steele County and one census tract in Griggs County, including the cities of Hannaford and Binford. There is only one rural empowerment zone in the state, and there are not any rural enterprise communities in the state. The USDA reports that each Round II rural empowerment zone received $2 million in funds the first year, similar amounts for subsequent years, with the funding for the remaining years to be determined at a later date. Benefits of Round II designation include bond financing, work opportunity tax credits, federal income tax deductions, and brownfields income tax deductions.

Rural Champion Community Program

The USDA implemented the rural champion community program in 1999. Apparently the determination of which communities would be designated as rural champion communities was that communities that submitted applications in Round I or II for rural enterprise zone or empowerment community status, but were not selected, were invited to sign champion community agreements with USDA. The eight champion communities in the state are Rolette County champion community; Burke-Divide champion community; Cavalier County champion community; Dakota heartland champion community, which includes all of McIntosh County and the developable sites of Edgeley, Kulm, and Napoleon; Dakota partners champion community, which includes Pierce County, the city of Bowman, and the city of Hettinger; Dakota State Line Regional Alliance; Pembina County champion community; and Renville County champion community. State funding of rural champion communities is combined with the funding for REAP zones.

Urban and Rural Renewal Communities

The United States Department of Housing and Urban Development (HUD) administers the urban and rural renewal communities, urban empowerment zone, and urban enterprise community programs. The Renewal Community Initiative was established by the federal 2000 Community Renewal Tax Relief Act.

Over 100 applications were received by HUD for designation as a renewal community. The Turtle Mountain Indian Reservation is one of 40 renewal communities and is the only renewal community in the state. These renewal communities will be able to take advantage of approximately $6 billion in tax incentives that are exclusively available to renewal communities and as a distressed area, the renewal communities will also be eligible to share in an additional $11 billion in low-income housing and new market tax credits. Specifically, benefits of designation as a renewal community include access to tax credits, such as wage credits, work opportunity credits, and welfare-to-work credits; tax deductions, such as commercial revitalization deductions, Section 179 deductions, and environmental cleanup cost deductions; capital gains exclusions; and bond financing.

State Program Background

Previous studies and legislation indicate a broad range of state programs designed to address economic development in some fashion. Three state programs address technology economic development, economic development with a focus on a geographical region, and state economic development programs that have a strong federal link.

Renaissance Zones

North Dakota Century Code Chapter 40-63 provides for the renaissance zone program, which was created in 1999. The Tax Commissioner implemented the program and the Department of Commerce Division of Community Services administers the program. The renaissance zone program provides for tax incentives to encourage investment in renaissance zones. The scope of authority of renaissance fund organizations was expanded in 2003 to allow these organizations to provide financing to businesses outside a renaissance zone. In addition, the 20-block geographical limitation was expanded in 2003 to allow cities of over 5,000 population to expand a renaissance zone beyond the 20-square-block limit at the rate of one additional block for each additional 5,000 population to a maximum size of 35 blocks.

Tax incentives under the renaissance zone program include a single-family residence tax credit, business or investment income exemption, business purchase or expansion tax credit, historic property preservation or renovation tax credit, and renaissance fund organization investment tax credit.

Rural Growth Incentive Program

North Dakota Century Code Section 54-34.3-13 provides for the rural growth incentive program. The program is managed and administered by the Department of Commerce Division of Economic Development and Finance. As initially enacted, the program was limited to providing loans to small communities; however, in 2003 the program was expanded to include grants to small communities. The expansion of the program is effective through July 31, 2005, and after that date returns to the original scope of providing loans.

Manufacturing Extension Partnership Program

The Dakota Manufacturing Extension Partnership, Inc., (TD MEP) program is a nonprofit organization with the mission to help its clients create new wealth. The Dakota MEP is a partnership of federal, state, local, and private sector resources and is part of a nationwide network of MEP centers serving all 50 states and Puerto Rico. The Dakota Manufacturing Extension Partnership, Inc., targets services to existing companies committed to grow and to companies that will create new wealth and opportunities in their communities. The Dakota Manufacturing Extension Partnership, Inc., provides training, assessment, and technical assistance services in the areas of people, management, manufacturing, marketing, and information technology, with a specialty in providing Lean Enterprise services. The Dakota Manufacturing Extension Partnership, Inc., receives federal funding, state funding, private sector fee-for-service funding, and private sector in-kind funding.

Red River Valley Business and Technology Development Zone Background

The concept of creation and support of a Red River Valley business and technology development zone has been a topic addressed by a variety of actors at the federal, state, and local levels.

Congressional Activities

Activities related to the creation of such a zone include promotion of a zone by United States Senator Byron Dorgan. As part of his support for this zone concept, Senator Dorgan has participated in several regional technology conferences, hosted several research corridor action summits, and helped to direct more than $100 million of scientific research funding to the University of North Dakota (UND) and North Dakota State University (NDSU).

State Activities

State activities related to technology in the Red River Valley appear in large part to cluster around the campuses of NDSU and UND. These activities clustered around the universities include federal, state, and privately funded programs.

North Dakota State University has committed resources to technology in the region. For example, NDSU has a Division of Research, Creative Activities, and Technology Transfer. The division is dedicated to:

- Advancing NDSU research, creative activities, and technology transfer.
- Fostering entrepreneurial projects.
- Interacting with the Legislative Assembly, the State Board of Higher Education, federal program officers and administrative personnel, and Congressional Delegations and their staffs.

- Providing leadership for enhancing NDSU's national status as a research and graduate institution.
- Establishing NDSU's new Research and Technology Park.

The North Dakota State University Research and Technology Park, Inc., is a university-owned, nonprofit corporation that is managed outside the University System. The mission of the park is to enhance the investments in NDSU by the citizens of North Dakota.

The University of North Dakota has committed resources to technology in the region, including the UND Energy and Environmental Research Center and the University Technology Park. The University Technology Park was developed by the UND Aerospace Foundation--a public, nonprofit corporation that serves as a link between industry and the John D. Odegard School of Aerospace Sciences at UND. The technology park includes technology tenants and the North Dakota Center for Innovation.

The University of North Dakota Center for Innovation helps entrepreneurs, students, and researchers launch new technologies, products, and ventures; develop business and marketing plans; and access talent and sources of venture financing. The center manages the Technology Incubator and coordinates the development of the University Technology Park. The Center for Innovation Foundation serves as a link between successful entrepreneurs and the Center for Innovation and its Rural Technology Incubator in the University Technology Park on the UND campus to encourage and foster entrepreneur outreach and new ventures in the region.

Federal Programs

Federal business and technology programs associated with the universities include the Experimental Program to Stimulate Competitive Research (EPSCoR) and the North Dakota Small Business Innovation and Research and the Small Business Technology Transfer (SBIR/STTR) (NDSS).

The EPSCoR is a joint program of the National Science Foundation and 27 states and territories, of which North Dakota is one. The program promotes the development of the states' science and technology resources through partnerships involving a state's universities, industry, and government and the federal research and development enterprise.

Located at the Center for Innovation, the NDSS assists small businesses in seeking federal assistance in developing products and services based on advanced technology. Through a federal and state technology (FAST) partnership program grant from the United States Small Business Administration, the NDSS assists small businesses in participating more competitively in the national Small Business Innovation and Research (SBIR) program and the Small Business Technology Transfer (STTR) program.

Testimony and Committee Considerations

The committee received a status report from a representative of the Division of Economic Development and Finance, Department of Commerce, for comments regarding the Red River Valley Research Corridor. The $200,000 appropriated to the Division of Economic Development and Finance during the 2003 legislative session to market the Red River Valley Research Corridor was leveraged with a federal grant. On September 8, 2004, the United States Department of Commerce Economic Development Administration awarded the Department of Commerce, University of North Dakota, and North Dakota State University with a grant of $155,000 per year for the next three years. This new funding, with the new funding being requested by the division for the 2005-07 biennium, will be used to pursue the following targeted activities:

1. Providing technical assistance.
2. Conducting applied research.
3. Disseminating results of these activities.

The remainder of the testimony and committee considerations relating to the economic development efforts study are addressed in the **Primary Sector Business Congress Activities** portion of this report.

Recommendations

The committee recommendations relating to the economic development efforts study are addressed in the **Recommendations** portion of the **Primary Sector Business Congress Activities** portion of this report.

BUSINESS CLIMATE STUDY

The three main areas of the business climate study are creation of a business climate index, consideration of methods of creating business partnerships with Indian tribes in the state, and participation in the activities of the Primary Sector Business Congress.

Business Climate Index

Background

There are a myriad of studies comparing state business climates and ranking the states based upon a variety of factors. Each study has a slightly different approach or focus; therefore, how a state ranks in a study depends on the unique factors or methodology used in that particular study.

Testimony and Committee Considerations

The committee received and reviewed several examples of state business climate studies that rank the states and the committee received testimony regarding several of these rankings. Testimony was received that the goal of the Legislative Assembly should be to create a stable environment, which will in turn result in and support a healthy business environment. Examples of how state policy may impact the business environment include unemployment insurance premium rates, corporate tax rates, state insurance issues, workers' compensation rates, workforce availability, the health of the

transportation system, water issues, and funding and treatment of intellectual assets.

A representative of the Department of Commerce testified regarding business climate indexes. Reasons for the disparity between the variety of business climate indexes is multifold, including:

- Reports are often released by nonprofit special interest groups with an agenda that is often reflected in that group's factors or rankings.
- Nonprofit special interest groups often use factors and methodology that is difficult to understand or is simply not entirely revealed.

As can be expected, within the large spectrum of indexes, some indexes are favorable to the state while others are not. Another issue to consider in comparing business climate indexes is that because there are virtually 50 different tax systems in the United States, it is difficult to accurately compare states to each other. Although it was requested that the Legislative Assembly be very cautious in using and evaluating rankings and indexes on a surface level, the committee also received testimony that when a company looks at locating within the state a third-party index is not the basis for site location.

A representative of Workforce Safety and Insurance testified that under a 2002 Oregon state premium rate ranking, North Dakota was ranked as having the lowest premium rate in the nation; however, under the ranking compiled by North Dakota's Workforce Safety and Insurance, North Dakota ranks 20th in the nation. The critical issue in rate ranking workers' compensation is to consider what the states are paying to injured workers.

The Tax Commissioner testified that the broad range of business climate indexes frequently misreflect the North Dakota tax system. The Tax Commissioner testified that if the Legislative Assembly is looking to improve the tax climate in the state, it may be helpful to consider changing the state's two tax forms.

Business Partnerships With Indian Tribes

North Dakota Background

The Economic Development Committee was charged with considering methods of creating business partnerships with North Dakota Indian tribes in order to increase primary sector business growth in the state. This portion of the study focused on business opportunities that may be available to Indian tribes through the United States Small Business Administration (SBA) 8(a) business development program for small disadvantaged businesses (SDBs). Recent legislation pertaining to this particular area of the study included Section 13 of House Bill No. 1019 (2003), the Department of Commerce appropriation, which provided legislative intent that the Department of Commerce assist in the creation of business partnerships with Indian tribes in order to increase primary sector business growth on the reservations.

The five Indian reservations located in this state are the Fort Berthold Reservation, Spirit Lake Reservation, and Turtle Mountain Reservation, which are located wholly in North Dakota and the Lake Traverse Reservation and the Standing Rock Reservation, which include land in North Dakota and South Dakota. Data from the United States Census Bureau, 2000 census, provides:

Geographic Area	Total Population	American Indians and Alaska Natives Population (One Race or In Combination)	Median Age
Fort Berthold Reservation	5,915	4,091	30.0 years
Lake Traverse Reservation (North Dakota portion)	191	5	42.9 years
Spirit Lake Reservation	4,435	3,368	22.8 years
Standing Rock Reservation (North Dakota portion)	4,044	3,450	23.9 years
Turtle Mountain Reservation (includes off-reservation trust land in North Dakota)	8,307	8,043	23.6 years
North Dakota	642,200	35,228	36.2 years

United States Small Business Administration Small Disadvantaged Business Programs Background

The United States Small Business Administration administers two business assistance programs for Small Disadvantaged Businesses--the 8(a) business development program and the small disadvantaged business certification program. The Small Business Administration reports that "the 8(a) Program offers a broad scope of assistance to socially and economically disadvantaged firms. SDB certification strictly pertains to benefits in Federal procurement." Businesses that are 8(a) firms automatically qualify for small disadvantaged business certification. The Small Business Administration regulatory rules for the 8(a) program and the small disadvantaged business certification program are at 13 CFR 124. Both of these programs provide for special rules for a firm owned by an Indian reservation under 13 CFR 124.109. Additionally, the Small Business Administration Office of Native American Affairs is designed to assist Native-American-owned small businesses.

The three basic requirements an 8(a) applicant must meet are:

1. It must be a small business.
2. It must be unconditionally owned and controlled by at least one socially and economically disadvantaged individual who is a United States citizen and is of good character.
3. It must demonstrate potential for success.

The length of time an 8(a) program participant firm may participate in the program is limited. Participation is divided into two stages--a four-year development stage and a five-year transitional stage. A participant essentially graduates from the 8(a) program at the expiration

of the participant's term. In addition to the time limit, 8(a) firms are required to maintain a balance between their commercial and government business and there is a limit on the total dollar value of sole-source contracts that an individual participant can receive while in the program.

The Small Business Administration reports a broad range of benefits of 8(a) program participation, including:

1. Participants can receive sole-source contracts, up to a ceiling of $3 million for goods and services and $5 million for manufacturing.
2. Federal acquisition policies encourage federal agencies to award a certain percentage of their contracts to small disadvantaged businesses. To speed up the award process, the Small Business Administration has signed memorandums of understanding with 25 federal agencies allowing them to contract directly with certified 8(a) firms.
3. Recent changes permit 8(a) program firms to form joint ventures and teams to bid on contracts. This enhances the ability of 8(a) program firms to perform larger prime contracts and overcome the effects of contract bundling--the combining of two or more contracts together into one large contract.

Although small disadvantaged business certification is available to 8(a) program participants automatically, a firm may qualify for small disadvantaged business certification independently as well. Similarities between the 8(a) program and small disadvantaged business certification eligibility requirements include the social and economic disadvantage criteria. Differences between the two programs include the ownership restrictions for nondisadvantaged individuals and how joint ventures are treated.

Program benefits of small disadvantaged business certification include price evaluation adjustments, evaluation factors or subfactors, and monetary subcontracting incentive programs. A certified small disadvantaged business may qualify for a price evaluation adjustment of up to 10 percent on certain federal procurements. Evaluation factors and subfactors allow qualified contractors to receive a credit when using certified small disadvantaged businesses as subcontractors.

Certification as a small disadvantaged business is good for three years. An 8(a) program firm that graduates remains on the small disadvantaged businesses certified business list for three years following 8(a) program graduation.

Testimony and Committee Considerations

The committee held a joint meeting with representatives of the Indian tribes in the state, held at the United Tribes Technical College in Bismarck. As part of this joint meeting, the committee received testimony from representatives of:

- MHA Enterprises, which is, in part, an umbrella agency over the Fort Berthold Development Corporation, Twin Buttes Custom Homes, Mandaree Solid Surfacing, and Elbow Woods Works.
- Nature's Way Tissue Corporation, an American Indian-owned business in Oneida, Wisconsin.
- Fort Berthold Development Corporation, an 8(a) tribally-owned business.
- Sioux Manufacturing Corporation, a tribally-owned business in Fort Totten.

The committee received testimony from the president of United Tribes Technical College that not only is the college growing but the American Indian population in the state is growing; therefore, educating the American Indian workforce and keeping American Indian students in the state following graduation is critical. The committee received testimony that all of the Indian tribes in North Dakota have economic development plans.

The committee received testimony that although the 8(a) program provides that a business is required to apply for a business code classification, such as being classified as a construction business, that business can participate in a variety of industries. Additionally, if an 8(a) business is designated under a specific industry code, that business can still partner with an appropriate mentor business to expand the scope of the kind of services the original business can provide. The 8(a) program provides an opportunity to have 8(a) tribal businesses work with new or startup nontribal businesses and this translates into significant business opportunities for North Dakota businesses through partnerships with tribally owned 8(a) businesses. Additionally, these partnerships are an opportunity for the tribes to address and resolve some of the economic problems that exist on the reservations.

The committee received testimony that the process of submitting bids under the 8(a) procurement process is complex. In looking at how the tribally owned businesses can partner with private businesses, one thing the federal government considers is the history of the tribal business. Therefore, there is a benefit to helping private businesses establish partnerships with the tribally owned businesses early in the process.

The committee received testimony that although there are barriers and obstacles present in the 8(a) program, sole-sourcing is a fantastic benefit. As long as the businesses' contractors are qualified and within the price guidelines, sole-sourcing bids can work. Testimony was received that it is unfortunate that the United States Department of Agriculture does not participate in sole-sourcing contracts in North Dakota. Additionally, the committee received testimony that although the 8(a) program does not have this requirement, it is important to tie jobs to the Indian reservations in order to help alleviate the high unemployment on the Indian reservations.

The committee generally agreed that as part of the Primary Sector Business Congress focus group discussions, it will be important to include participants from 8(a) businesses.

Primary Sector Business Congress

Overview

As part of the business climate study, the committee was charged with actively participating in the activities of the Primary Sector Business Congress. The Legislative Council contracted with the National Association of State Development Agencies (NASDA) to assist in organizing and conducting the Primary Sector Business Congress, synthesizing the data gathered in the course of the Primary Sector Business Congress activities, and drafting legislative and nonlegislative recommendations.

In addition to participating in the focus group discussions leading up to the actual Primary Sector Business Congress, participating in the Primary Sector Business Congress, and working with NASDA in crafting an initiative resulting from all of the activities of the Primary Sector Business Congress, the committee spent considerable time reviewing and researching the definition of "primary sector business" as it applies to economic development in the state and the related difficulties in collecting data on the number of primary sector businesses and jobs in the state. The **Primary Sector Business Congress Activities** portion of this report addresses the committee's participation in the Primary Sector Business Congress and related activities.

Primary Sector Business Definition

The committee considered the use and definition of "primary sector business." Additionally, the committee considered how to best collect data regarding the number of primary sector businesses and jobs in the state. "Primary sector business" is used and defined in a variety of places in state law. The most common elements of these statutory definitions include the use of knowledge or labor to add value to a product that results in the creation of new wealth.

The term primary sector business is used and defined in several sections of the North Dakota Century Code, including sections:

- 10-30.5-01(4) - North Dakota Development Fund, Inc.
- 10-33-124(1)(b) - Certified nonprofit development corporations.
- 26.1-50-01(4) - North Dakota low-risk incentive fund.
- 40-57.1-02(3) - Tax exemptions for new and expanding businesses.
- 52-02.1-01(11) - New jobs training.
- 57-38-01.18(3)(c) - Income tax gain on stock sale or transfer when a corporation has relocated to the state.
- 57-39.2-04.3(6)(g) - Income tax exemption for manufacturing or recycling primary sector business computer and telecommunications equipment.
- 57-38.5-01(3) - Seed capital investment tax credit.

Representatives of the Department of Commerce provided the committee with information regarding the definition of "primary sector business." North Dakota Century Code Section 10-30.5-01 provides:

> "Primary sector business" means an individual, corporation, limited liability company, partnership, or association which through the employment of knowledge or labor adds value to a product, process, or service that results in the creation of new wealth. The term includes tourism but does not include production agriculture.

The two main components of the definition of primary sector business are added value and new wealth.

The committee received testimony that the Department of Commerce struggles with determinations of whether businesses, such as engineering and consulting firms, meet the necessary primary sector business elements. Because the primary sector business determination requires an estimate of at what point the percentage of exported services meets a certain threshold, within the same class of businesses, some businesses may meet the primary sector business definition while others do not.

The term primary sector business appears to be a term unique to North Dakota; however, other states use similar terms to determine incentive eligibility. In accordance with legislative directive, the Department of Commerce is supporting projects that create new wealth, which is essential to increasing state revenues. The definition of primary sector business is legislatively created in an attempt to deal with limited resources. The committee received testimony that in part because of the perception of unfair competition, the state has expected that the Department of Commerce refrain from incentivizing businesses to stay in the state. The Commissioner of Commerce testified it is impossible to provide incentives to all businesses due to the limited resources available.

Primary Sector Business Data Collection

In response to committee requests, the Department of Commerce and Job Service North Dakota attempted to identify a consistent method by which to track the number of primary sector businesses and jobs in the state. The committee received testimony from representatives of both agencies that the two agencies have determined it is impossible to get a true measure of the number of primary sector firms and workers in the state because no state agency collects data that measures the necessary two components of added value and new wealth under the current definition of primary sector business.

The Department of Commerce and Job Service North Dakota identified the following four state agencies that receive regular reports from the state's business community:

1. Secretary of State.
2. Job Service North Dakota.
3. Tax Department.
4. Workforce Safety and Insurance.

Evaluating the potential of each of these four agencies, the Department of Commerce and Job Service

North Dakota determined the Secretary of State's office was the most appropriate venue for collecting the information necessary to track primary sector business data. Testimony was received that the following issues would need to be addressed or recognized if the Secretary of State were to be required to gather data to track primary sector business data:

1. Legislation would be required to change the forms and reporting requirements for all domestic businesses.
2. General partnerships and other sole proprietorships would be missed from the reporting requirements.
3. Legislation would be required for an information-sharing agreement between the Secretary of State and Job Service North Dakota, and it would be necessary to ensure that the information-sharing agreement between Job Service North Dakota and the Department of Commerce would include this information.
4. The Secretary of State would require an appropriation to update the computer system and account for additional administrative costs.

Recommendations

The committee recommendations relating to the **Business Climate** portion, **Business Partnerships With Indian Tribes** portion, and **Primary Sector Business Congress** portion of the **Business Climate Study** are addressed in the **Recommendations** portion of the **Primary Sector Business Congress Activities** portion of this report.

PRIMARY SECTOR BUSINESS CONGRESS ACTIVITIES

The Primary Sector Business Congress activities covered a broad range of activities. To begin the activities of the Primary Sector Business Congress, the committee held and participated in the following seven focus group discussions:

- Six business community focus group discussions, for the business communities of:
  - Grand Forks.
  - Fargo.
  - Bismarck.
  - Minot.
  - Eastern rural North Dakota.
  - Western rural North Dakota.
- One focus group discussion specifically for economic developers in the state.

Following the seven focus group discussions, the committee held and participated in the Primary Sector Business Congress. Using the information gathered during the course of the focus group discussions and the Primary Sector Business Congress, the committee crafted a business initiative and related legislative recommendations.

Focus Group Discussions

At each of the seven focus group discussions, committee members sat at tables with business people and economic developers. The president of NASDA facilitated each focus group discussion. The committee followed the same format for each of the six business community focus group discussions, with a slightly modified format for the focus group discussion designed specifically for economic developers.

Business Community Focus Group

The business community focus group discussion participants were primarily business people, representatives of the local economic development organizations from the appropriate focus group region, representatives of the Department of Commerce, and representatives of the North Dakota Economic Development Foundation. The participant invitation list for each of these focus group discussions was created with assistance from a variety of parties, including the president of NASDA; the local economic development organizations for each particular focus group; the Department of Commerce; and Greater North Dakota Association, which is now known as the Greater North Dakota Chamber of Commerce. The format for each of the six business community focus group discussions was:

1. Welcoming comments by the committee chairman, including the history of House Bill No. 1504 and participant and committee member introductions.
2. A status report of the North Dakota Economic Development Foundation, by a representative of the foundation.
3. A group interview.
4. A group visioning exercise.
5. A summary of the focus group discussion activities.

The group interview portion of each focus group discussion included solicitation of participants' and committee members' responses to the following 11 questions:

1. What is the best reason for your business to be in North Dakota?
2. What is the biggest barrier of doing business in North Dakota?
3. What are the key elements to success in your business?
4. In what ways does the state influence your ability to succeed in North Dakota?
5. What one thing could the state do to help your business expand in North Dakota?
6. What must occur for us to retain and expand job opportunities in North Dakota?
7. What is your overall impression of the state's economic growth prospects?
8. Do you think there are other states that might be more attractive places to do business? Which and why?
9. Who are the key economic development players in this state and what are their roles?

10. Are there any specific changes needed in legislation, regulations, funding, programs, etc.?
11. What is the next step in enhancing the business climate?

The group visioning exercise portion of each focus group discussion included participants' and committee members' responses to a list of the following 20 written statements, for which participants and committee members were asked to indicate whether they strongly agreed, agreed, disagreed, or strongly disagreed:

1. North Dakota is a great place to grow my business.
2. There is little difference in the business climate between the eastern and western ends of the state.
3. Government policies in North Dakota are, for the most part, supportive of business growth.
4. Tax and regulatory policies are the biggest barriers to business growth in North Dakota.
5. Primary sector businesses have a bright future in North Dakota.
6. Most businesses are aware of state programs that can assist them.
7. North Dakota has a superior workforce that meets the needs of primary sector businesses.
8. Capital is readily available for established businesses in North Dakota.
9. The state has a consistent, comprehensive strategy to encourage the growth of jobs and firms in North Dakota.
10. North Dakota needs to commit more resources to encouraging the growth of jobs and businesses in the state.
11. North Dakota has many advantages over neighboring states for business growth.
12. Rural communities in North Dakota need more help in growing their business base.
13. Local economic development programs are the key to assisting businesses to grow and create jobs.
14. The business community needs to be more involved in the development of economic development policies and programs at the state level.
15. There are neighboring states that have more business-friendly environments than North Dakota.
16. State and local economic developers work closely in their efforts to support business and job growth.
17. There are few changes in state policies and programs that would encourage me to grow my business.
18. North Dakota could do more to ensure that we have a well-prepared, qualified workforce.
19. Government incentives make little difference in business decisions.
20. Business climate has more to do with the economy, industry forces, and local market conditions than it does with government policies and programs.

Through a show of hands, the facilitator informally reviewed participant and committee member responses to these 20 statements.

Economic Developers Focus Group

The economic developers focus group differed from the first six focus groups in that all of the invited participants were economic developers. The purpose of this session was to specifically determine what the local communities' economic development needs are and what the state may be able to do to help address these needs. During the course of the group interview, participants made the following observations:

- Although the general business climate in the state is pretty strong, smaller communities in this state struggle to maintain the status quo. There is not much opportunity to bring in outside businesses.
- Businesses find it difficult to get financing for intellectual capital.
- Small businesses in the tourism industry find it difficult to get economic development support and financing.
- If a small community can get a business to come to the community to take a look, the community does well; however, these small communities are short on infrastructure and need to be able to respond quickly to the needs of potential businesses.
- Information technology issues can hinder economic development. Information technology assistance could help address affordability and could include a pilot project to help offset the high cost of information technology infrastructure.
- Communities find access to a high-skilled labor force to be a difficult challenge to overcome.
- It is difficult for small communities to afford economic developer services. Small communities would benefit from receiving the state's assistance for the purpose of funding, training, or otherwise supporting developers.
- Some communities in the western portion of the state have benefited from the increased oil market.
- Economic development could be assisted by addressing international trade issues such as transportation issues and rail line issues.
- There is a perceived struggle to keep the Small Business Development Councils (SBDCs) a priority. These councils are perceived as a valuable tool and resource for economic developers and giving local communities increased control over these SBDCs may help more communities to embrace the concept of SBDCs.
- Economic developers need to be risk-takers.
- Although primary sector business programs get state support, small communities have unique needs that do not always fit this model. For example, in a small town, a hardware store may be a business that would justify state support.

- The issues of agriculture, energy, and tourism are major drivers in some communities. Although a lot of the jobs in these sectors are low-tech, that should not be perceived as a negative feature. The state should not limit focus on high technology jobs, because not all workforce members need to be college graduates.
- In the tourism industry there appears to be liability issues that could be addressed that could help grow the industry.
- There is concern with the decrease in funds going to the regional councils. These councils have boards and strive to do good work.
- There is support for making the Department of Commerce less political. It would be helpful to insulate the work of the Department of Commerce from political maneuvering, such that a change in a Governor would not necessarily result in a change in the administration and policies of the Department of Commerce.
- International opportunities need to be addressed, as Canada is a huge economic development opportunity for North Dakota.
- In the tourism industry, once a tourist comes to the state they have a good time and will likely return to the state to visit.
- There is great value to distance learning; however, there have been some problems with schools cooperating with local economic developers. The education system can be a rather closed community and it would be helpful to have the cooperation of the schools and teachers to assist in vocational fields.
- Intellectual property is a high-risk investment and we need to train the financing industry to recognize the value of intellectual property.
- Taxes and regulations are really not a problem in this state, although there could be more done to fine tune these areas.
- There is a perception that venture capital deals are lacking because businesses do not want to give up control of the business. Venture capital investments are not designed for traditional banks.
- There is a perception that definitions used for economic development funding need to be addressed, such as the terms production agriculture and primary sector business.
- Although the North Dakota Development Fund is being used, there appears to be a backlog of applications and a lack of human resource to process these applications.
- In dealing with tribal partnerships to help strengthen economic development, local developers need to learn how to encourage tribal partnerships. Tribal law is in part like dealing with the law of a foreign country, which requires special expertise and a large degree of trust between the parties.
- Corporate farming in the state is a big issue. Small family farms are not going to cut it anymore in this state; therefore, the state has to address the corporate farming laws.
- Ongoing focus group discussions across the state would be helpful because the focus group discussions seem to result in good recommendations.
- The North Dakota Development Fund has become more risk-adverse over the years. The fund needs to change this course and establish an acceptable loss rate.

Following this final focus group discussion, committee members and participants attended the Primary Sector Business Congress.

Primary Sector Business Congress

The Primary Sector Business Congress was held on May 11, 2004, at the State Capitol. The invitation list was made up of individuals invited to and of individuals who attended the seven focus group discussions. The congress received the following four reports from the president of NASDA:

1. *Summary of Responses to Group Interviews.*
2. *North Dakota Business Climate Study*, "Visioning Exercise Results, West/East".
3. *North Dakota Business Climate Study*, "Report on Issues to Be Addressed".
4. *A Sampling of Best Practices in Economic Development.*

As part of the Primary Sector Business Congress, participants and committee members separated into three groups to prioritize 13 economic development issues, establish one primary action to be taken to address each of the six highest prioritized economic development issues, and establish performance measures to track progress in addressing the highest prioritized economic development issues. The 13 economic development issues were:

1. Image building (internal and external) and internal marketing of state resources for businesses.
2. International marketing and business development services.
3. Local economic development programs: support and strengthen.
4. Manufacturing: support and strengthen the network.
5. Procurement opportunities for local firms (state, private, local, federal).
6. Strategies: ongoing discussion and refinement and obtaining input.
7. Targeting industry, finding the one thing that North Dakota could do best.
8. Taxes: refining and expanding the incentives. Rates and structure.
9. Tribal business opportunities for partnering with other firms in North Dakota.
10. Technology commercialization: what can be done to put more of the pieces in place.

11. University partnerships: increasing and broadening partnerships with private sector to include internships, mentoring, incubation, targeted research, and entrepreneurship.
12. Venture capital.
13. Workforce training and development: making sure we have enough skilled workers; upgrading skills; and providing more real-world experiences for students at all levels.

Following the group breakouts, a representative of each of the three groups reported to the congress regarding the activities of the group.

Resulting Business Initiatives

Following the Primary Sector Business Congress the committee reviewed and discussed each of the 13 economic development issues addressed at the Primary Sector Business Congress and added additional topics for consideration, resulting in the following 21 action items for the committee to consider as part of the committee's business initiative:

1. External image.
2. Internal image.
3. Marketing available resources.
4. International business development.
5. Support for local economic developers.
6. Manufacturing.
7. Procurement.
8. Ongoing consultation on strategies.
9. Targeting industry.
10. Taxes.
11. Tribal businesses.
12. Technology commercialization.
13. North Dakota University System.
14. Venture capital.
15. Workforce development.
16. Education.
17. Intellectual property protection.
18. Liability and insurance.
19. Energy.
20. Transportation.
21. Gauging return on investment for economic development.

The 21 action items fell into one or more of the following five major categories:

1. General business climate.
2. Business services.
3. Image and marketing.
4. Support for local economic development.
5. Education partnerships.

For each of these 21 action items, the committee took one or more of the following actions:

1. Drafted proposed legislation.
2. Referred the issue to relevant lead agencies or private entities to report additional information to the committee.
3. Directed long-term, further study.

The committee requested and received action item-related information in writing from the:

1. Bank of North Dakota.
2. State Board for Career and Technical Education.
3. Department of Commerce.
4. State Board of Higher Education.
5. Insurance Commissioner.
6. Job Service North Dakota.
7. Superintendent of Public Instruction.
8. Tax Commissioner.
9. Department of Transportation.
10. Representatives of the energy industry.
11. Greater North Dakota Chamber of Commerce.

The committee drafted and reviewed bill drafts addressing the action items. Written action item-related information provided by the 11 agencies and private sector entities was considered in drafting and revising the bill drafts. Many of the bill drafts underwent revisions and were therefore received by the committee more than once. To address accountability for the committee's business initiative following the Primary Sector Business Congress, each bill draft considered by the committee provided for a 2005-06 interim report to the Legislative Council on the status of the implementation of the legislation.

After receiving and reviewing all the bill drafts, the committee determined whether to include each separate bill draft in a consolidated bill draft that would reflect the business initiative resulting from the Primary Sector Business Congress. The final committee recommendations reflect the committee's action on this matter. The following action item headings reflect the testimony and committee considerations that took place in considering bill drafts addressing these items.

External Image

The committee considered a bill draft that provided for the Commissioner of Commerce to establish an image information program to assist in providing a positive image of the state. The bill draft required the Commissioner of Commerce to implement a program for use by state agencies to present to the public a positive image of the state.

The committee recognized that although external image is difficult to legislate, the issue was raised repeatedly over the course of the Primary Sector Business Congress activities. The Commissioner of Commerce estimated the cost of the image information program for the 2005-07 biennium at $100,000, which included one full-time equivalent (FTE) position that would be split with the business hotline program.

Internal Image

The committee considered a bill draft that provided for the Commissioner of Commerce to establish a two-year pilot program for a toll-free business development program. Under the bill draft, the commissioner was required to implement a toll-free business development program for in-state and out-of-state callers.

The Commissioner of Commerce testified that the state has a toll-free number for out-of-state callers, but this number is not available for in-state callers primarily because of issues related to concerns regarding the

state overstepping the role of local economic developers. The Department of Commerce has put substantial effort into establishing good relationships with local economic developers and it is very important to retain this good working relationship.

The committee considered a revised version of the business development program bill draft that changed the program name to the business hotline program and clarified that the program could be used as a clearinghouse for economic development information.

The Commissioner of Commerce estimated the cost for the business hotline program for the 2005-07 biennium at $30,000, which included one FTE position that would be split with the image information program.

International Business Development and Tribal Business

The committee received a status report from representatives of the Department of Commerce, Division of Economic Development and Finance, North Dakota Trade Office. The North Dakota Trade Office is actively pursuing the charges of the office which include identifying trade opportunities and identifying barriers to trade.

The committee considered a bill draft that elevated the division's International Trade Office to a division of the Department of Commerce by creating a Department of Commerce Division of International Trade and expanded and clarified the duties of the North Dakota American Indian Business Development Office.

The committee considered a revised version of the bill draft that included changes that were not intended to be substantive in nature but were instead intended to be style changes to simplify the bill draft. Similar to the first draft, the second draft created a Department of Commerce Division of International Trade and provided that the duties of the North Dakota American Indian Development Office include providing services to assist in the formation of partnerships between American Indian and non-American Indian businesses.

The committee received testimony from the Commissioner of Commerce in support of creating the new division. The commissioner also recommended changing the name of the new division to the Division of International Business and Trade. The Commissioner of Commerce estimated the cost for the creation of the division for the 2005-07 biennium at $413,103, which included a 1.5 FTE position. The commissioner testified that the portion of the bill draft relating to tribal businesses likely would not require any additional appropriation.

Support for Local Economic Developers

The committee considered a bill draft that provided for the Division of Economic Development and Finance to implement a program to provide services to local economic developers. Additionally, the bill draft provided for a continuing appropriation of any fees collected under the program.

The committee considered a revised version of the bill draft that provided that the Division of Economic Development and Finance implement a program through which the division would provide training to assist local economic developers in meeting the needs of businesses. The bill draft retained the authority to collect fees but the continuing appropriation was removed.

The committee received testimony from the Commissioner of Commerce who suggested the program be expanded to include the provision of services to entities such as convention and visitors bureaus. The Commissioner of Commerce estimated the cost for the program for the 2005-07 biennium at $50,000 general funds and $100,000 special funds from the fees collected.

Manufacturing

The committee considered a bill draft that provided for the Division of Economic Development and Finance, through the state's Manufacturing Extension Partnership, to form a statewide manufacturers' association. The association would be allowed to charge a membership fee that through a continuing appropriation would be used to help the association be self-funded. Under this bill draft, the state's role in assisting the implementation of the statewide manufacturers' association would be temporary and the law would expire August 1, 2009. Additionally, the bill draft provided for a report to the Legislative Council during the 2005-06 and 2007-08 interims.

The committee considered a revised version of the bill draft as the result of suggestions by the Dakota Manufacturing Extension Partnership, Inc. (TD MEP). The Dakota Manufacturing Extension Partnership, Inc., is a nonprofit 501(c)(3) corporation, which receives a combination of federal, state, and private fee-for-service funding. Under this revised bill draft, temporary law would require the Department of Commerce to seek to contract with TD MEP to implement the Dakota manufacturing initiative. Under this initiative, TD MEP would build a membership association of manufacturers in North Dakota and South Dakota and would leverage state funds with additional public and private funds to perform this service. The bill draft included a general fund appropriation to the Department of Commerce of $165,000 for the biennium for the purpose of contracting with TD MEP.

The committee received testimony from a representative of TD MEP in support of the revised bill draft and in support of the committee's efforts to address the needs of the manufacturing sector. The Dakota Manufacturing Extension Partnership, Inc., provides services to North Dakota and South Dakota manufacturers in large part to take advantage of economies of scale. With increasing global competition, testimony indicated it is very important for North Dakota and South Dakota to work together. The appropriation request of $165,000 for the 2005-07 biennium was based upon an identical match being sought from South Dakota, as well as federal and private funds.

Procurement

The committee considered a bill draft that provided for an information program relating to the state's purchasing practices and a report to the Legislative Council. Under the bill draft, the Office of Management and Budget would be required to implement a program to inform potential vendors of state purchasing systems as well as to provide for a report to the Legislative Council during the 2005-06 interim.

The committee considered a revised bill draft that included changes made in response to Office of Management and Budget agency response information received by the committee. This bill draft provided for a new section to the state purchasing law, requiring that the Office of Management and Budget implement an Internet program to inform potential vendors of state purchasing opportunities. Additionally, the agency report to the Legislative Council would have included a requirement that during the 2005-06 interim the Office of Management and Budget study and report to the Legislative Council on the most effective manner in which to provide for a one-stop procurement assistance center.

The committee received testimony from a representative of the Office of Management and Budget in support of the concept of providing a comprehensive Internet location for all state purchasing opportunities and in support of the opportunity to fully study the concept of a one-stop procurement assistance center, allowing for a coordinated effort between the Office of Management and Budget and other state and federal actors. However, the Office of Management and Budget proposed amending the revised bill draft to:

1. Require each agency subject to the Office and Management and Budget procurement laws to post that agency's procurement opportunities to an Internet site maintained by the Office of Management and Budget State Procurement Office.
2. Allow the State Procurement Office to post procurement opportunities for agencies that are exempt from the Office of Management and Budget procurement laws.

The committee received testimony the estimated cost for the purchasing practices program and study for the 2005-07 biennium would be between $150,000 and $175,000, which included one FTE position.

Ongoing Consultation on Strategies

The committee considered a bill draft that provided for a continuing North Dakota business climate study by the Legislative Council and the Department of Commerce. The bill draft provided that the study would be performed during the 2005-06 and 2007-08 interims and provided for continuing focus groups and Primary Sector Business Congresses.

The Commissioner of Commerce estimated the cost for the study for the 2005-07 biennium at between $50,000 and $70,000.

Targeting Industry

The committee considered a bill draft that required the Commissioner of Commerce to identify target industries and every two years to make a report to the Legislative Council regarding these target industries.

The Commissioner of Commerce estimated the cost of implementing the bill draft for the 2005-07 biennium at $50,000.

Taxes

The committee considered a bill draft that provided for the Tax Commissioner to study the corporate taxing system and tax incentives to stimulate economic development. Additionally, the bill draft provided for the commissioner to report to the Legislative Council before July 1, 2006.

The committee received testimony from qualified businesses regarding the seed capital investment tax credit. The testimony indicated the credit is doing exactly what it was intended to do by creating new jobs and bringing new wealth to the state. The committee received testimony in support of making the following changes to the seed capital investment tax credit:

1. Extend the North Dakota seed capital investment tax credit.
2. Remove the existing $2.5 million "cap" that limits the availability of the credit.
3. Allow the credit for North Dakota taxpaying or tax passthrough entities.
4. Allow the credit for employees of the qualified primary sector business who do not have a controlling ownership interest in that business.
5. Improve marketing for the program.
6. Lessen some of the cumbersome restrictions of the program.

The Tax Commissioner testified that on approximately May 25, 2004, the tax credit limits under the seed capital investment program had been reached under NDCC Section 57-38.5-05, which provides:

> **Seed capital investment tax credit limits.** The aggregate amount of seed capital investment tax credit allowed for investments under this chapter through calendar year 2002 is limited to one million dollars and after calendar year 2002 is limited to two million five hundred thousand dollars. If investments in qualified businesses reported to the commissioner under section 57-38.5-07 exceed the limits on tax credits for investments imposed by this section, the credit must be allowed to taxpayers in the chronological order of their investments in qualified businesses as determined from the forms filed under section 57-38.5-07.

The committee received testimony that when the seed capital investment tax credit cap was reached in May 2004 more than a dozen businesses may have been disadvantaged. Testimony from representatives of some of these disadvantaged businesses requested the

cap be raised and there not be a gap in credits under this program.

The committee considered a bill draft relating to eligibility and qualifications for seed capital investment tax credits. The bill draft:

- Expanded who may be eligible for a tax credit under NDCC Chapter 57-38.5 to include corporations and passthrough entities.
- Provided for a $5 million limitation of eligible, qualified investments a qualified business may receive. Existing law does not limit the total amount of investments a qualified business may receive.
- Increased the aggregate annual investment for which a taxpayer may obtain a tax credit from a maximum of $250,000 to a maximum of $750,000.
- Provided for an annual cap on investment tax credits under the chapter. Existing law provides a total tax credit cap of $2.5 million for investments and the bill draft would have provided for an annual tax credit cap of $5 million beginning with taxable year 2005.
- Provided a method to deal with investments that occur after an annual tax credit cap is reached. Under existing law, once the tax credit cap was reached in May 2004 additional investments were not eligible for the credit. The bill draft provided that once an annual tax credit cap is reached, any additional qualified investments may be carried forward to a future year.
- Expanded who may be a taxpayer for purposes of the seed capital investment tax credit. Existing law prohibits the tax credits by an individual whose full-time professional activity is the operation of the qualified business. The bill draft removed this prohibition.

The committee considered a revised bill draft that differed from the first version in that the second version:

- Removed the proposed increase in the aggregate annual investment for which a taxpayer may obtain a tax credit under the seed capital investment tax credit.
- Removed the proposed language that provided that once an annual tax credit cap is reached, any additional qualified investments could be carried forward to a future year.
- Removed the requirement for a minimum investment of $5,000.
- Changed the proposed annual cap on investment tax credits to an annual aggregate amount of seed capital investment tax credits of $2 million.

The committee considered the issue of a municipality's authority to grant tax exemptions for new and expanding businesses and the eligibility to receive such exemptions if the new or expanding businesses are located within an urban renewal development or renewal area. The committee received testimony that the North Dakota School Boards Association has a standing resolution opposing tax abatements.

Technology Commercialization

The committee considered a bill draft that provided for an agency study of how to stimulate technology commercialization and for a report to the Legislative Council. The Department of Commerce or the State Board of Higher Education would perform the study and be required to report the outcome of the study to the Legislative Council before July 1, 2006.

The Commissioner of Commerce estimated that, if assigned to the Department of Commerce, the cost of the study for the 2005-07 biennium would be $40,000.

North Dakota University System

The committee considered a bill draft that provided for the State Board of Higher Education to establish centers of excellence application forms, accept applications, review applications for completeness, and forward completed applications to a newly created Centers of Excellence Commission. The Centers of Excellence Commission consisted of seven members, including two members appointed by the North Dakota Economic Development Foundation; three members of the Legislative Assembly appointed by the Legislative Council, serving in a nonvoting capacity; and two members appointed by the State Board of Higher Education. This commission would be responsible for narrowing the selection of applicants and, in partnership with the State Board of Higher Education, presenting the details of each proposed designated center of excellence to the Budget Section for approval. Upon approval by the Budget Section, a designated center of excellence would be eligible to receive funding under the specific provisions of the award determination.

The committee received testimony from the Commissioner of Commerce that the centers of excellence program is an initiative with a huge opportunity to positively impact the economic development and growth of this state. The commissioner testified it is very important that the eligibility criteria for the centers of excellence program be carefully defined.

The committee received testimony from the chancellor of the North Dakota University System in support of the provisions of the bill draft refining and clarifying the law relating to the centers of excellence program. Based on constitutional concerns, the chancellor testified in opposition to the provisions that provided the Legislative Assembly and newly created commission may designate a center of excellence at a university under the control of the State Board of Higher Education. The chancellor supported working with the members of the Legislative Assembly during the 2005 legislative session to address these concerns.

Venture Capital

The committee considered a bill draft that provided for the Department of Commerce to study economic development incentives and report to the Legislative Council before July 1, 2006. The Commissioner of Commerce estimated the cost of the study at $30,000 to $70,000.

The committee received a report from representatives of the Department of Commerce regarding the spectrum of economic development programs and risk capital programs available in the state. The committee received testimony that North Dakota has done an outstanding job in providing incentives for economic development and on getting a good return on investment for these incentives. If there is a need for additional incentives in the state, it would be in the area of early stage financing and seed capital financing. One drawback to the state's programs is the difficulty in accessing the necessary financing for large, risky projects.

The committee considered a bill draft that required the Division of Economic Development and Finance to create a risk capital network.

The committee considered a revised bill draft relating to risk capital which addressed the 2003 legislative grant of authority to the Bank of North Dakota to invest in North Dakota alternative venture capital investments and early-stage capital funds. The bill draft:

- Extended the program expiration date from July 31, 2007, to July 31, 2009.
- Increased from $5 million to $10 million the amount of money the Bank of North Dakota may invest under this program.
- Authorized the Bank of North Dakota to arrange for management of these investments by either the North Dakota Development Fund, Inc., or by a third party that is located in the state and which has demonstrated fund management experience.
- Increased from $5 million to $10 million the amount of money from the Development Fund which may be loaned to the Bank of North Dakota for these investments.
- Authorized the Development Fund to manage these Bank of North Dakota investments.

The committee received testimony from the president of the Bank of North Dakota regarding the revised version of the risk capital bill draft. The president testified there are potential conflicts if the Bank is a lender and an owner; therefore, he recommended that any additional funding for the program be directed to the Development Fund or other third party in order to minimize any potential conflicts of interest. He said merely providing for third-party management does not adequately address potential conflicts because the initial investment is still being made on behalf of the Bank. Additionally, the president testified in support of any additional funding for this program coming from Bank of North Dakota revenues.

The committee considered a bill draft that provided for the Bank of North Dakota or the Department of Commerce to perform a risk capital study and report the outcome of the study to the Legislative Council. In addition to the risk capital study, the bill draft provided for the repeal of NDCC Chapter 10-30.1, venture capital corporations, and Chapter 10-30.2, the Myron G. Nelson Fund, Incorporated, effective August 1, 2007.

Workforce Development

As part of the workforce development topic, the committee requested and received a status report on the four-quadrant workforce training system from a representative of the State Board of Higher Education and a status report on the Work Force 2000 program from a representative of Job Service North Dakota.

Education

The committee considered a bill draft that provided for a new section to the State Board for Career and Technical Education law which provided for a cooperative work experience program pilot project expiring July 30, 2009. The bill draft provided for the department to provide funds to individual schools or school cooperatives for the purpose of funding a local coordinator for local schools or for funding the actual local school cooperative work experience program.

The committee received testimony from a representative of the State Board for Career and Technical Education in support of the proposed bill draft. Providing students with real-world work experiences will best happen by making the business and student connection at the local level. However, making this connection will require substantial resources to fund local positions. The committee received testimony that a funding level of $2 million for the 2005-07 biennium would enable thirty $30,000 yearly grants to schools to partially fund an individual to work specifically at the local level and that a key to the entire program would be a statewide coordinator to manage the program. Although the department currently has a FTE position designated to help with this coordination, there are no funds tied to this position. The director of the State Board for Career and Technical Education estimated the cost of funding the one FTE position for the 2005-07 biennium at $120,000 to $250,000.

The committee received testimony that lack of funding for career and technical education programs is a major concern. Under the current system, the demand for career and technical education programs outstrips the financial resources to provide funding for the programs.

The committee received testimony from the president of NASDA that the concept of a cooperative work experience is not a new idea. The bill draft continues and expands available programs in the state. West Virginia implemented a similar program and businesses are very excited about participating. In order to make this proposed cooperative work experience program successful in North Dakota, it is necessary to fund the FTE position at the State Board for Career and Technical Education.

Intellectual Property Protection

The committee considered a bill draft that provided for an agency study of intellectual property rights and for a report to the Legislative Council. The study would have been performed by either the State Board of Higher Education or the Department of Commerce and the

agency performing the study would have been required to report to the Legislative Council before July 1, 2006.

The Commissioner of Commerce testified if the study were assigned to the Department of Commerce, the estimated cost of the study for the 2005-07 biennium would be $50,000.

Liability and Insurance

The committee considered a bill draft that provided for a study by the Insurance Commissioner regarding North Dakota's liability laws as they relate to business and liability insurance, including how they impact the travel and tourism industry. The commissioner would be required to report to the Legislative Council before July 1, 2006.

The committee received testimony from a representative of the Insurance Department regarding proposed amendments to the bill draft. The proposed amendments clarified that the study is intended to address the insurance marketplace and the affordability of liability insurance coverage.

The committee received testimony from the Commissioner of Commerce that North Dakota is losing travel and tourism business due to the inability of these businesses to obtain liability insurance.

The committee considered a revised version of the bill draft, implementing the changes proposed by the Insurance Department. Under this revised bill draft, the study would be of the North Dakota liability insurance marketplace, including consideration of liability issues that may result in barriers for businesses seeking affordable liability coverage and consideration of successful actions taken by other states to improve availability and affordability of liability insurance and providing for a specific focus on the travel and tourism industry.

Energy

The committee received testimony from representatives of the energy industry. The testimony indicated the state has built a good public policy environment for the generation and exportation of electric energy. Regarding exportation of energy from the state, because transmission lines need to cross state boundaries and are regulated by the federal government, the options available for states to become proactive are limited. Testimony provided that from a legislative perspective, the best option for expanding the exportation of energy is to continue and possibly expand the proactive role North Dakota has had toward energy development.

Transportation

The committee considered a bill draft relating to a transportation study by the Upper Great Plains Transportation Institute and a report to the Legislative Council on the outcome of this study before July 1, 2006. The study included how to improve the state's transportation infrastructure in order to enhance the state's business climate with a focus on the potential to expand the sale of goods to markets outside the state.

The committee received testimony from a representative of the Department of Transportation regarding the bill draft. Transportation is very important to economic development, but historically, transportation has been the last issue to be addressed. Testimony indicated transportation needs to be included at the front end of economic development discussions.

The committee received testimony that the Department of Transportation has worked extensively with the Upper Great Plains Transportation Institute, and because some of these transportation issues may most appropriately be addressed by the Department of Transportation and because the department's strategic planning efforts would be a significant source of information in performing this study, the department recommended that the committee consider including the Department of Transportation in the bill draft.

Gauging Return on Investment for Economic Development

The committee received testimony that if the state measures return on investment for economic development programs, it will be important to implement this carefully and not just create another level of government oversight. Additionally, it will be important to collect data that is usable and valuable, ensuring that the oversight is being done for the right reasons.

The committee considered a bill draft that would have required the Department of Commerce to monitor the return on investment for each of the department's financial assistance programs. Under the bill draft, the Department of Commerce would have been required to include return on investment provisions in contracts with recipients of financial assistance and to adopt administrative rules regarding return on investment monitoring.

The committee received testimony from the Commissioner of Commerce that the department is only one of several agencies that provides economic development assistance, and to be effective, the return on investment monitoring would need to be done by every one of these agencies.

Recommendations

The committee recommends Senate Bill No. 2032 to address a broad range of economic development and business climate issues. The bill consolidates individual bill drafts considered by the committee into a business initiative that:

- Creates an image information program.
- Creates a business hotline pilot program.
- Creates a Department of Commerce Division of International Trade.
- Expands and clarifies the duties of the Department of Commerce Division of Economic Development, North Dakota American Indian Development Office.
- Creates a local economic developer training program.
- Creates a Dakota manufacturing initiative.

- Creates a state procurement Internet service and provides for an Office of Management and Budget study of a one-stop procurement center.
- Provides for a Legislative Council and Department of Commerce continuing business climate study.
- Requires the Commissioner of Commerce to identify target industries and report these targets to the Legislative Council.
- Provides for a Tax Commissioner study of corporate taxes and economic development tax incentives and report to the Legislative Council.
- Revises the seed capital investment tax credit program.
- Provides for a State Board of Higher Education technology commercialization study and report to the Legislative Council.
- Revises the centers of excellence program.
- Provides for a Department of Commerce study of economic development incentives and a report to the Legislative Council.
- Revises the Bank of North Dakota venture capital investment program.
- Provides for a Legislative Council risk capital study.
- Provides for a career and technical education cooperative work experience pilot program.
- Provides for Department of Commerce, in consultation with the State Board of Higher Education, intellectual property study and report to the Legislative Council.
- Provides for an Insurance Commissioner liability insurance study and report to the Legislative Council.
- Provides for an Upper Great Plains Transportation Institute, in consultation with the Department of Transportation, transportation study and report to the Legislative Council.

The committee recommends House Bill No. 1031 to extend from 5 to 10 years the maximum length of the tax exemption a municipality may grant to a new and expanding business and to allow a new and expanding business to receive the tax exemption granted by the municipality regardless of whether the new and expanding business is located within an urban renewal development or renewal area.

EDUCATION COMMITTEE

The Education Committee was assigned three studies. Section 32 of Senate Bill No. 2421 directed a study of the manner in which elementary and secondary education is funded in this state and the feasibility and desirability of instituting alternative funding methods. House Concurrent Resolution No. 3052 directed a study of school district data collection and reporting requirements. Section 1 of House Bill No. 1155 directed a study of the criteria by which a student's school district of residence is established and whether that criteria correctly assigns benefits and responsibilities to the appropriate school districts.

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 (NDCC) Section 15.1-21-03, which relates to instructional time for high school courses, student scores on recent statewide tests of reading and mathematics, changes to the teacher licensure process, data envelopment analysis, and the failure of school boards to meet a statutory threshold for increasing teacher compensation.

Committee members were Senators Layton Freborg (Chairman), Dwight Cook, Robert S. Erbele, Tim Flakoll, Gary A. Lee, and Constance Triplett and Representatives Merle Boucher, Thomas Brusegaard, Lois Delmore, Pat Galvin, C. B. Haas, Lyle Hanson, Kathy Hawken, Gil Herbel, Bob Hunskor, Dennis Johnson, RaeAnn G. Kelsch, Lisa Meier, David Monson, Phillip Mueller, Jon O. Nelson, Mike Norland, Margaret Sitte, and Clark Williams.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2004. The Council accepted the report for submission to the 59th 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, of the Constitution of North Dakota 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 now providing $489.3 million for student payments and transportation, $49.8 million for special education, $69.4 million for tuition apportionment, $5 million for supplemental payments, and $51.8 million for teacher compensation payments.

School District Demographics

Today the state's public schools provide education services to 99,174 students. Fifty percent of those students are enrolled in the eight largest school districts, and the 205 remaining districts provide services to the other students. Within 10 years, given the best-case scenario, it is expected that the number of students will fall to 89,980. However, if the more accurate cohort survival projections are employed, the number of students will likely fall to 81,531.

Pending Litigation

The continued decline in the number of students, coupled with increased expectations for services and a belief that the resources available for education are both insufficient and inequitably distributed, has resulted in the commencement of an education funding lawsuit against the state. The plaintiffs in the case of *Williston Public School District No. 1 v. State of North Dakota* include the Williston, Devils Lake, Grafton, Hatton, Larimore, Surrey, Thompson, United, and Valley City Public School Districts. The trial is expected to begin in October 2005. A similar lawsuit was commenced 15 years earlier. Although three of the five members of the North Dakota Supreme Court determined the state's funding system for elementary and secondary education

did not meet constitutional requirements, the plaintiffs lost in *Bismarck Public School District No. 1 v. State of North Dakota*, 511 N.W.2d 247 (N.D. 1994) because Article VI, Section 4, of the Constitution of North Dakota requires four members of the court to declare a statute unconstitutional.

In light of the pending litigation, the committee reviewed a variety of funding issues, including per student payments, weighting factors, equalization factors, mill levy caps, teacher compensation payments, minimum teacher salary requirements, tuition apportionment, vocational education, joint powers agreements, and nonoperating districts. However, it was the areas of transportation funding and supplemental payments that received the greatest amount of attention and ultimately resulted in committee recommendations.

Supplemental Payments

North Dakota Century Code Section 15.1-27-11 directs the Superintendent of Public Instruction to calculate the average valuation of property per student by dividing the number of students in average daily membership in grades 1 through 12 in a high school district into the sum of:

- The district's latest available net assessed and equalized taxable valuation of property, plus
- All tuition payments and county and unrestricted federal revenue received by the district, divided by the total of the district's general fund levy, high school transportation levy, and high school tuition levy.

If the quotient is less than the latest available statewide average taxable valuation per student and if the district's educational expenditure per student is below the most recent available statewide average cost of education per student, the Superintendent of Public Instruction is further instructed to:

1. Determine the difference between the latest available statewide average taxable valuation per student and the average taxable valuation per student in the high school district;
2. Multiply the result determined under No. 1 by the number of students in average daily membership in grades 1 through 12 in the high school district;
3. Multiply the result determined under No. 2 by the number of general fund mills levied by the district in excess of 150, provided that any mills levied by the district which are in excess of 210 may not be used in this calculation; and
4. Multiply the result determined under No. 3 by a factor calculated by the Superintendent of Public Instruction to result in the expenditure, over the course of the biennium, of the full amount provided for the purpose of this section.

The result is the supplemental payment to which a high school district is entitled, in addition to any other amount provided under NDCC Chapter 15.1-27.

The 58th Legislative Assembly (2003) increased the prior biennium appropriation for supplemental payments from $2.2 million to $5 million and further directed that the calculation include all unrestricted federal revenue. It was recognized that almost half of the money expended for education falls outside any equalization mechanism and that of those funds subject to equalization, the only mechanism in place before the 2003 legislative session was a mill equalization factor, which was increased during that session to 34 mills through June 30, 2004, and to 36 mills through June 30, 2006. Thereafter, an additional two mills are to be added each year.

The principal component of unrestricted federal revenue is impact aid. This is federal financial assistance made available to certain school districts that are affected by federal activities. Because federal property is exempt from local property taxes, impact aid is distributed to help replace revenue that would otherwise be available to pay for educating students who live on the federal property or whose parents work on such property. In this state, the primary recipients are the Grand Forks and Minot School Districts.

While the inclusion of unrestricted federal revenue in the state's supplemental aid calculation did bring additional dollars within the equalization formula, subsequent research indicated that the move was contrary to federal law.

Committee Consideration - Recommendations

The committee considered three bill drafts to address the needed removal of the phrase "unrestricted federal revenue" from the supplemental payment calculation. The first bill draft would have permitted the supplemental payments to continue under the 2003 language until the end of the biennium, at which point a new calculation that did not include unrestricted federal revenue would take effect. The second bill draft carried an emergency clause and therefore the supplemental payments would have continued under the 2003 language only until the time of the bill's enactment and filing with the Secretary of State. Thereafter, the remaining 2003-05 distribution would have taken place under the amended language. It was estimated that this bill draft would allow the remaining 8 percent of the biennial payments to be distributed under the new language. The final bill draft likewise removed the reference to "unrestricted federal revenue" from the supplemental payment calculation and carried an emergency clause. The bill draft also provided for a hold harmless provision.

When the Legislative Assembly elected to include unrestricted federal revenues in the supplemental payment calculation, certain school districts were able to benefit from that action while others would have received more funds had the distribution been calculated without the reference. The committee consequently considered reprioritizing the distribution of the 2003-05 contingent funds to make whole those districts that would have received more funds had the reference to unrestricted federal revenues not been included. Although representatives of the affected school districts indicated they had made plans to utilize the dollars, the committee determined the ending fund balances maintained by the

school districts would more than compensate for any loss of anticipated funds and in the event any district was seriously harmed, a case for reinstitution of the funds could still be made during the 2005 legislative session.

The committee therefore recommends House Bill No. 1032 to remove the reference to unrestricted federal revenue from the supplemental payment calculation and to provide that this bill is an emergency measure.

Data Envelopment Analysis

Before the 2003 legislative session, the North Dakota Century Code provided for school district transportation payments that were based on the number of miles driven, the size of bus used, and in certain instances even the number of one-way trips taken by students. The payment system was based on historical costs, and efficiency was encouraged by capping the transportation payments at 90 percent of a district's stated actual costs.

Although dissatisfaction with the payment system was evident, no viable funding alternative presented itself. The 58th Legislative Assembly therefore removed all statutory references to the transportation funding system and provided that all school districts be given a block grant equal to the amount they received for transportation during the 2001-03 biennium. In addition, the Legislative Assembly appropriated $50,000 for completion of a data envelopment analysis project in the hope it would provide the basis for a viable and equitable transportation funding system that could be considered by the Legislative Assembly in 2005.

Data envelopment analysis is an alternate method for measuring and encouraging efficiency, as well as providing a basis for funding. Data envelopment analysis involves consideration of comparable operating units. With respect to school district transportation, all school districts in the state are divided into categories or peer groups. Once the categories or groups are established, the next step is to standardize the inputs. These would include costs for administrators, drivers, mechanics, repairs, fuel, etc. Data envelopment analysis also accounts for factors such as road conditions, which are outside management control. Through use of a mathematical formula, the variables are then 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. Not only does data envelopment analysis provide a basis for funding, it also assists school districts in reconfiguring their transportation routes so that the greatest possible degree of efficiency might be attained.

Committee Consideration - Recommendations

The committee recommends House Bill No. 1033 to require the Superintendent of Public Instruction to use data envelopment analysis as the basis for calculating school district transportation payments. The committee amended the original bill draft to provide for a three-year phasein period so school districts that would lose money under a data envelopment analysis-based formula could have additional time to make budgetary adjustments. The committee expressed rather serious concern about the fact that approximately 75 school districts would gain money, approximately 125 school districts would lose money, and the remaining school districts would see minimal impact. The committee also was concerned that as the 125 school districts become more efficient, future increases recognizing their efficiency would come from the higher funding given initially to the 75 school districts. The committee concluded that money had been spent to conduct the data envelopment analysis study and therefore the entire Legislative Assembly should have an opportunity to examine the transportation funding system that would be generated.

DATA COLLECTION AND REPORTING STUDY

Background

North Dakota Century Code Section 15.1-02-08 provides that the Superintendent of Public Instruction is to implement a uniform system for the accounting, budgeting, and reporting of data for all school districts in the state. That section also requires the Superintendent to designate the software standards that school districts must use in their accounting, budgeting, and reporting functions.

Much of the data submitted by school districts is used to compile the Superintendent of Public Instruction's biennial report. In accordance with NDCC Section 15.1-02-09, that report must include the number of school districts in the state, the financial condition of each school district, the value of property owned or controlled by each school district, the cost of education in each school district, the number of teachers employed by each school district and their salaries, the number of students in average daily membership and the average daily attendance in each school district, the grades in which students are enrolled, and, when applicable, the courses in which they are enrolled. Information regarding the state's approved nonpublic schools is also compiled.

While the Superintendent's biennial report provides an overview of the state of education, other statutorily mandated reports are designed to elicit far greater detail. Examples of such reports include the employee compensation reports, school reports, school district biennial planning reports, and professional development reports. In addition, school districts must provide information regarding their approval and accreditation and their cost of education. Most significantly, school districts must provide any information required by the Superintendent of Public Instruction in order that determinations can be made regarding the amount of state aid to which they are entitled.

In addition to the data that must be statutorily provided to the Superintendent of Public Instruction, school districts are also required to file reports with other agencies and entities. These include discharge of personnel reports, school condition reports, educational

technology reports, and various career and technical education reports. The Board of Education of the city of Fargo is also required by statute to "prepare and report to the mayor and the city council ordinances and regulations necessary for the protection, safekeeping, and care of the schools, lots, sites, and appurtenances and all the property belonging to the city, connected with and appertaining to the schools, and to suggest proper penalties for the violation of ordinances and regulations."

Performance Based Data Management Initiative

The Performance Based Data Management Initiative is a collaborative effort between the United States Department of Education and all state education agencies in the country. The initiative's goal is to improve the quality and timeliness of education data reportable by school districts and state agencies to the United States Department of Education. Under the initiative, a repository is being created for all performance-based program data. This repository, which is called the Educational Data Exchange Network, will allow the Department of Public Instruction and all other state education agencies to transmit all of their program performance data to the United States Department of Education.

The Performance Based Data Management Initiative will increase the focus on outcomes and accountability through improvements in data accuracy and, most importantly, streamline federal education data collections. The pilot phase has already been completed and in November 2004 the second phase of data transmission testing begins.

Participation in this initiative has forced the Department of Public Instruction to examine its own reporting and data collection requests. Already, many of the requests have been narrowed simply through the identification and removal of redundancies.

In May 2003 the Department of Public Instruction used 393 forms. By September 2003 that number had been reduced to 318 and by March 2004, 242 forms were still being used. That evidences a 38 percent reduction in forms and includes the elimination of approximately 70 annual reports.

Committee Consideration - Conclusion

The committee recognized this is an ongoing process and a fundamental transformation of the manner in which data is collected and accessed. Since the streamlining effort appeared to have had no negative impact on school districts in the state, the committee makes no recommendation regarding its study of school district data collection and reporting requirements.

STUDENT'S SCHOOL DISTRICT OF RESIDENCE DETERMINATIONS STUDY

Background

North Dakota Century Code Section 54-01-26 provides that every individual has a residence and that an individual's residence is determined according to the following premises:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose and to which the person returns in seasons of repose.
2. There can be only one residence.
3. A residence cannot be lost until another is gained.
4. The residence of the supporting parent during the supporting parent's life, and after the supporting parent's death, the residence of the other parent is the residence of the unmarried minor children.
5. An individual's residence does not automatically change upon marriage, but changes in accordance with subsection 7. The residence of either party to a marriage is not presumptive evidence of the other party's residence.
6. The residence of an unmarried minor who has a parent living cannot be changed by either that minor's own act or that of that minor's guardian.
7. The residence can be changed only by the union of act and intent.

Residency determinations play a major role in delineating responsibility for the provision of elementary and secondary education and often have significant financial consequences. While residency determinations affect issues of annexation, home education, postsecondary enrollment options, tuition, and open enrollment, they seem to elicit the greatest concern when applied to student placements for purposes other than education. For this limited instance, NDCC Section 15.1-29-14 defines a student's school district of residence as:

[T]he district in which the student resides:

a. At the time that a state court, tribal court, juvenile supervisor, or the division of juvenile services issues an order requiring the student to stay for a prescribed period at a state-licensed foster home or at a state-licensed child care home or facility;
b. At the time a county or state social service agency places the student, with the consent of the student's parent or legal guardian, at a state-licensed foster home or at a state-licensed child care home or facility;
c. At the time the student is initially placed in a state-operated institution, even if the student is later placed at a state-licensed foster home or at a state-licensed child care home or facility; or
d. At the time the student is voluntarily admitted to a state-operated institution or to a state-licensed child care home or facility.

The section further provides if after a student placement is made, the student's custodial parent establishes residency in another school district in this state, the school district in which the custodial parent has established residency becomes the student's school district of

residence for purposes of paying tuition and tutoring charges. A "custodial parent" is defined as "the parent who has been awarded sole legal and physical custody of the student in a legal proceeding or, if there is currently no operative custody order, the parent with whom the student resides." If the student resides with both parents, then both are considered to be custodial parents.

Reimbursement for Services Provided - Responsibility for Costs

When a student is placed in a school district for noneducational purposes, the student's district of residence is determined under NDCC Section 15.1-29-14 and that school district becomes obligated to pay tuition to the admitting district. The responsibility of the student's district of residence is limited to the state average cost per student. Any remaining charges are paid by the state within the limits of legislative appropriations. If the student requires special education services, the responsibility of the school district of residence increases to 2.5 times the state average cost per student plus 20 percent of all remaining costs.

Frequently, students placed under NDCC Section 15.1-29-14 for noneducational purposes are in the foster care system and their families are transient. An address provided at the time of the student's placement can impose significant financial obligations on the school district within which the address is located. If the student's parent relocates and establishes residency in another school district, the financial burden is then statutorily placed on the school district in which the parent resides. However, given the transitory lifestyles of many such parents, school districts are often incapable of determining the address to which a parent has relocated and must therefore maintain financial responsibility for a student who at best may have only very tenuous connections with the district.

Committee Consideration - Recommendations

The committee recommends Senate Bill No. 2033 to establish a student's school district of residence at the time of placement and require the placing agency to review that determination each September 1 thereafter. The bill also clarifies that the state is responsible for the financial obligations of a student if the student's custodial parent or legal guardian is no longer a resident of this state, if parental rights have been terminated, if the student no longer has a custodial parent, or if the Superintendent of Public Instruction determines that all reasonable efforts to locate the student's parent or legal guardian have been unsuccessful. The committee concluded that determinations regarding a student's residency are complex and often result in unintended outcomes and that is why previous efforts by individuals or groups acting alone did not meet with success. This time, however, representatives of several school districts, special education directors, the Department of Public Instruction, and the Developmental Disabilities Division and the Children and Family Services Division of the Department of Human Services came together to craft a solution that the committee found to be both workable and acceptable.

MISCELLANEOUS REPORTS

School District Employee Compensation Reports

North Dakota Century Code Section 15.1-02-13 directs each school district to report employee compensation data to the Superintendent of Public Instruction before September 11 of each year. Because of this deadline, the 2003-04 data was not available for presentation to the committee. However, the committee did receive the data governing the 2001-02 and the 2002-03 school years.

Between the 2001-02 and 2002-03 school years, the average teacher base salary increased by $2,129. One hundred thirty-eight school districts had average teacher base salary increases that were lower than the state average. Between the 2001-02 and 2002-03 school years, the average total compensation for teachers increased by 5.6 percent. In 85 school districts, the average total compensation for teachers was less than the state average.

While the average total compensation for teachers rose by $2,471 between the 2001-02 and 2002-03 school years, the average total compensation for administrators rose by $3,190 during that same period.

Requests for Waivers of Accreditation Rules

The Superintendent of Public Instruction received a request to waive the education improvement standard. The request was denied because the relief sought was for the current year, whereas waivers are granted only for the succeeding school year.

The Superintendent of Public Instruction received a request to waive the counselor qualification standard. The request was denied because the issue was satisfactorily addressed in the rules governing counselor credentials.

Requests for Waivers Relating to Minimal Instructional Time for High School Units

The Superintendent of Public Instruction received a request to waive the instructional time requirements for high school units. The request was denied because alternatives were not sufficiently delineated, simply spending less time on noncore areas was not considered to be innovative, and the requesting district was not accredited at the high school level.

The Superintendent of Public Instruction received a request to continue the reconfiguration of school days. The request was conditionally approved because several of the included schools were on an accredited-warned status.

Failure of School Boards to Meet a Statutory Threshold for Increasing Teacher Compensation

Chapter 667 of the 2003 Session Laws directed the board of each school district to use an amount equal to at least 70 percent of all new money received for per student payments under NDCC Section 15.1-27-04 and tuition apportionment payments under Section 15.1-28-03 for the purpose of increasing the compensation paid to teachers and for the purpose of providing compensation to teachers who begin employment with the district on or after July 1, 2003. This directive did not apply if the board determined by a two-thirds vote that compliance would place it in the position of having insufficient fiscal resources to meet its other obligations. In the case of such a determination, the board was to notify the Superintendent of Public Instruction.

The Superintendent of Public Instruction received no notices under this section.

Other Reports

The committee was directed to receive the results of the state assessments in reading and mathematics and to receive a report regarding potential changes to the teacher licensure process. Because these topics were directly related to the work of the interim No Child Left Behind Committee, presentations to the Education Committee were considered to be redundant and therefore not requested.

The committee was also directed to receive a report regarding the data envelopment analysis project. Because of the complexities involved with data envelopment analysis, the committee considered it to be part of the education funding study and it is included in the portion of this report related to the financing of elementary and secondary education.

ELECTRIC INDUSTRY COMPETITION COMMITTEE

The Electric Industry Competition Committee was first 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.

Senate Bill No. 2015 (2003) extended the Electric Industry Competition Committee from August 1, 2003, to August 1, 2007. The bill also expanded membership of the committee from three or four members of the House of Representatives, no more than two of whom may be from the same political party and three or four members of the Senate, no more than two of whom may be from the same political party, to six members of the House of Representatives, four of whom must be from the majority political party and two of whom must be from the minority political party and six members of the Senate, four of whom must be from the majority political party and two of whom must be from the minority political party.

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 assigned to the committee a study directed by House Concurrent Resolution No. 3061 of the feasibility and desirability of enacting legislation to tax electric utility providers with a fair and uniform tax system and a study directed by Section 1 of Senate Bill No. 2310 of issues related to wind energy development in this state.

Committee members were Representatives Matthew M. Klein (Chairman), Arden C. Anderson, Wesley R. Belter, Jim Kasper, George Keiser, and James Kerzman and Senators Duane Mutch, David P. O'Connell, Larry Robinson, Ben Tollefson, Thomas L. Trenbeath, and Herb Urlacher. Representative Bruce Eckre was a member of the committee until his resignation from the Legislative Assembly on October 1, 2003.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2004. The Council accepted the report for submission to the 59th 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 are promoting electric industry restructuring. Arguments put forward for restructuring or implementing competition in the electric industry include greater customer choice and the possibility that open competition may lower costs, encourage generating efficiency, and allocate capital. However, risks and challenges of retail competition include maintaining reliability of supply, pricing outcomes in which some customers may benefit at the expense of others, and allocating stranded costs. The impetus for electric industry restructuring has also come from large industrial and commercial energy users that are opposed to subsidizing residential electricity users. For example, some industrial users are paying 150 percent of the actual cost of providing energy to those users, while residential customers are 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 for 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 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.

Under the current industry structure, the utility serving a service territory provides all these services and functions selling them as a single bundle. Nationwide, the restructuring debate centers on whether or how the generation function should be separated from the bundle allowing retail customers to choose their electricity supplier. If generation is unbundled from transmission and distribution, these services may remain regulated functions.

The Regulatory Compact

The provision of electric service traditionally has been considered to exhibit the characteristics of a natural monopoly. According to economic theory, a natural monopoly exists in a market if one service provider in the market can serve customers more efficiently than many competing service providers. A common explanation for electricity provision as a natural monopoly is that allowing competitors to string duplicate transmission and distribution lines and construct excess generation capacity would waste resources and increase electric rates for customers. Generally, the characteristics of a natural monopoly include a high, upfront capital investment in technology; limited storability of a provided service or goods; limited transportability, requiring operations near the end users; and cost advantages of large and integrated systems as a result of better utilization of existing capacity or economies of scale and scope.

In markets exhibiting the characteristics of a natural monopoly, government intervention in the form of regulation over a single firm is considered necessary to provide the market discipline competition cannot provide. In exchange for this monopoly, each utility is required to serve all customers within its service territory and to provide quality service at just and reasonable rates. The utility is permitted to recover reasonable and prudent expenses associated with its provision of service plus a reasonable rate of return on its investment made to serve customers. This exchange is known as the Regulatory Compact.

Under the Regulatory Compact, the traditional method of rate determination has been rate of return regulation. This type of regulation is designed to ensure that utilities offer their services at prices that are based on the cost of the services rather than on the value customers place on those services. In traditional rate of return regulation, the regulating entity determines the revenue requirement (the reasonable and prudent cost of providing 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. One critic has stated that rate of return regulation fails to penalize inefficient producers or reward efficient ones.

As an alternative to traditional rate of return regulation, some commentors 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.

Finally, 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. Finally, FERC Order No. 888 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

Twenty-four states and the District of Columbia have either enacted enabling legislation or issued a regulatory order to implement retail access. The local distribution company continues to provide transmission and distribution (delivery of energy) services. Retail access allows customers to choose their own supplier of generation energy services, but each state's retail access schedule varies according to the legislative mandate or regulatory orders. Arizona, Connecticut, Delaware, District of Columbia, Illinois, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, and Virginia have either enacted enabling legislation or issued a regulatory order to implement retail access. Retail access is either currently available to all or some customers or will soon be available. In Oregon no customers are participating in the state's retail access program but that state's laws allow nonresidential customers access. 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, West Virginia, Wisconsin, and Wyoming are not actively pursuing restructuring. In West Virginia the legislature and Governor have not approved the Public Service Commission restructuring plan authorized by state law. The legislature has not passed a resolution resolving the tax issues of the Public Service Commission's plan, and no activity has occurred since early in 2001. Arkansas, Montana, Nevada, New Mexico, and Oklahoma have

delayed their restructuring process or implementation of retail access. California has suspended direct retail access.

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 were introduced in the 107th Congress. To date, at least 34 bills relating directly or indirectly with the issue of restructuring the United States electric power industry have been introduced in the 108th Congress.

Territorial Integrity Act

Background

In conducting past studies of the impact of competition on the generation, transmission, and distribution of electric energy within this state, the committee has 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 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.

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 in which improvements could be made. The position of the rural electric cooperatives was that the Territorial Integrity Act was working and that fair and adequate guidelines were being developed by the Public Service Commission in following the interpretation placed on the law by the North Dakota Supreme Court in *Johanneson*. The cooperatives maintained any change in the law would result in considerable expense to 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 to serve their customers economically and to provide a return to their stockholders, the public utilities also must 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 the study.

1997-98 Study

In conducting a 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 fairplay 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 the 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 considered in Territorial Integrity Act disputes were:

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 were 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 2 applications were pending. The commission reported that rural electric cooperatives filed 33 objections of which 15 applications were granted, 11 applications were denied, and 7 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 enjoyed 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 had entered franchise agreements with two electricity providers--an investor-owned utility and a rural electric cooperative. These franchise agreements were nonexclusive, in that either provider could 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, which has reached the city commission.

2001-02 Study

In conducting yet another study of the impact of competition on the generation, transmission, and distribution of electric energy within this state, the 2001-02 interim Electric Industry Competition Committee again reviewed the history and operation of the Territorial Integrity Act. The committee received testimony from representatives of the state's investor-owned utilities, the state's rural electric cooperatives, and representatives of the cities of Fargo, Bismarck, and Minot.

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 Territorial Integrity Act was 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 would show growth in electric revenues of 4 percent for 2001, that growth was primarily due to off-system sales into the wholesale market, which although fairly robust for a few years had largely evaporated--absent off-system sales and the operating efficiencies that Montana-Dakota Utilities Company had implemented, growth of its entire North Dakota electric system had 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 were adding annually was declining, and soon the areas remaining for the investor-owned utilities in those cities to serve would be fully developed and the number of new customers they would be able to add would be zero. Representatives of the state's investor-owned utilities testified that the Territorial Integrity Act continued to be of urgency to the investor-owned electric providers, and it was an issue that needed 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 had operated. They testified the Territorial Integrity Act was working well for both the state's investor-owned utilities and the state's electric cooperatives. They testified the Act placed service decisions where they belong, with local city governing bodies. They testified the Territorial Integrity Act created a level playing field with a balanced approach and avoided duplication of expensive electric infrastructure and thus there was 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 acquired 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 were regulated. Proponents of this proposal said that providing more options for local electric service, rather than fewer, supported 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 this would allow electric cooperatives to purchase much larger investor-owned or municipal-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 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 were set based upon the net book value of their investment rate base, and the Public Service Commission generally would 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 had with the electricity providers in those cities are working well.

Testimony

At the outset of the interim, the committee solicited comments from representatives of the state's investor-owned utilities, the Association of Rural Electric Cooperatives, the Utility Shareholders of North Dakota, and municipal electric utilities concerning the committee's study of the impact of competition on the generation, transmission, and distribution of electric energy in this state to date, the direction the study should take during the 2003-04 interim, the future of the electric energy industry in this state, suggestions for a common electric industry taxation system, and the feasibility and desirability of encouraging electric energy providers to exchange or trade service areas to promote efficiency.

A representative of Montana-Dakota Utilities Company, the utility division of MDU Resources Group, Inc., testified that while interest in deregulating the electric industry has virtually evaporated for the time being, other issues remain. As a result of the committee's deliberations, all generation in the state, regardless of ownership or size, is now taxed on the same basis, legislation was enacted in 2003 granting property tax relief for five years for new high-voltage transmission lines, and legislation was enacted to eliminate the double taxation, or pancaking of taxes, on certain rural electric cooperative transmission lines. The committee received testimony that although all generation is taxed fairly and equally by the coal conversion tax, similar transmission and distribution property is not taxed equally. If transmission and distribution property is owned by an investor-owned utility, the property is subject to centrally assessed property taxes. If the same property is owned by a rural electric cooperative, it would be taxed entirely differently. In addition, the representative of Montana-Dakota Utilities Company noted that income of an investor-owned utility from the sale of electricity is subject to both federal and state corporate income tax and that the equivalent of electric operating income to a rural electric cooperative is not subject to income taxes.

The Montana-Dakota Utilities Company representative testified that that company continues to oppose the Association of Rural Electric Cooperatives proposal put forward during the 2001-02 interim which would have allowed a rural electric cooperative, or consortium of cooperatives, to acquire and operate electric properties owned and operated by an investor-owned electric utility, known as the willing buyer-willing seller proposal. The investor-owned utility representative testified that passage of this proposal without consumer safeguards such as Public Service Commission jurisdiction over rates and amendments to guarantee a level and fair bidding process could allow rural electric cooperatives to force investor-owned utilities out of business.

The Montana-Dakota Utilities Company representative also testified that another area the committee should review is the operation and effect of the Territorial Integrity Act. The committee received testimony that this law is a noose around the necks of the investor-owned utilities in North Dakota which is limiting their opportunity for growth in the state.

A representative of Xcel Energy, Inc., testified that Xcel Energy, Inc., has an intense desire, but little opportunity, to serve new customers at the distribution level. The representative testified that a solution must be found which will allow both rural electric cooperatives and investor-owned utilities to serve new customers. The representative testified that this lack of growth has the potential to create further problems for its customers as they could face potential rate hikes or service issues because of the inability of Xcel Energy, Inc., to grow its business in North Dakota.

A representative of Otter Tail Power Company testified that investor-owned utilities and rural electric cooperatives receive disparate treatment under the Territorial Integrity Act. Investor-owned utilities must apply to the Public Service Commission to serve customers outside city limits but cooperatives do not because it is assumed

that this is automatically in the public interest. Another example of the disparate treatment cited by the representative is that while an investor-owned utility does not need a certificate of public convenience and necessity to expand its service within a city where it is already providing service, it cannot expand to an area in the city if the expansion would interfere with the service of an electric cooperative or unreasonably duplicate the cooperative's facilities. The representative testified that in contrast, an electric cooperative can expand anywhere in a rural area. The committee received testimony that the rationale for this different regulatory treatment is that, although a cooperative might duplicate the facilities of an investor-owned utility in areas just outside a city, regulation of such duplication has been deemed unnecessary because the cooperative's management would not unnecessarily invest member money to duplicate the facilities of an investor-owned utility. However, the representative of Otter Tail Power Company testified that that company is familiar with instances in which rural electric cooperatives have extended their facilities into areas regardless of cost and likely return on investment in an apparent attempt to claim an area as a part of their service territory and thereby foreclose future expansion into the area by an investor-owned utility.

Representatives of the North Dakota Association of Rural Electric Cooperatives testified that the Territorial Integrity Act is working well and that there is no need to change the Act.

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.

ELECTRIC INDUSTRY TAXATION STUDY

House Concurrent Resolution No. 3061 directed a study of the feasibility and desirability of enacting legislation to tax electric utility providers with a fair and uniform tax system. The resolution reflected the Legislative Assembly's concern with electric industry taxation and noted that investor-owned electric utilities pay a public utility property tax on their transmission and distribution property while electric cooperatives pay land taxes and replacement property taxes, including a 2 percent gross receipts tax and a high-voltage transmission line tax, that investor-owned electric utilities are subject to state and federal corporate income taxes, and that this system of taxation results in disparities in tax collections among the state and its political subdivisions and creates unfairness in tax burdens among electric utilities.

Electric Industry Entities

The participants in the electric utility industry in North Dakota may be grouped in four categories:

1. Rural electric cooperatives - Nonprofit, member-owned corporations engaged in the electric utility business. Rural electric cooperatives may be further divided into distribution cooperatives, of which there are 19 operating in North Dakota, and generation and transmission cooperatives, of which there are seven operating in North Dakota.
2. Investor-owned utilities - For-profit corporations owned by their shareholders. Three investor-owned utilities do business in North Dakota.
3. Municipal utilities and municipal power agencies - Political subdivisions engaged in distribution of electricity to residents of a city or group of cities. A municipal utility provides services to one city. In North Dakota there are 12 municipal utilities. A municipal power agency is composed of two or more municipal utilities functioning jointly to take advantage of economies of scale. In North Dakota there is one municipal power agency functioning on behalf of six member municipal utilities.
4. Power marketers - Entities engaged in purchase and resale of electricity through transmission and distribution infrastructure owned by electric utilities. In North Dakota one power marketer is doing business.

Tax Types Imposed on the Electric Industry

In addition to differences in types of taxes that apply to electric utilities depending upon how they conduct business, different forms of taxation apply to each part of the process of generating and delivering electricity. Separate forms of taxation apply to severance of coal from the earth, generation of electricity or production of other products from coal, generation of electricity from wind, transmission of electricity through large-capacity transmission lines, and distribution of electricity to consumers.

Coal Severance Tax

The coal severance tax was initially imposed in North Dakota in 1975 and has been the subject of numerous rate changes and other adjustments. A substantial change in severance and conversion tax policy was made by passage of Senate Bill No. 2299 (2001). The legislation was intended to assist the North Dakota lignite industry to maintain its competitive position in the market by shifting some tax burden from severance to generation of electricity. The legislation reduced the general coal severance tax rate from 75 cents per ton to 37.5 cents per ton and increased the rate of coal conversion taxes to offset revenue losses to the state and affected political subdivisions. The revenue from the general severance tax is allocated 30 percent to a constitutionally established coal development trust fund and 70 percent to the coal-producing counties based upon coal production in each county. Severance tax revenues received by a county are further allocated 30 percent among cities, 30 percent among school districts, and 40 percent to the county.

In addition to the general severance tax rate, a separate two cents per ton tax is imposed upon severance of

coal. The entire revenue from the two cents per ton tax is deposited in the lignite research fund.

Coal Conversion Tax

The coal conversion tax is imposed on the operator of a coal conversion facility, defined to include any coal-fired electric generating unit with a capacity of 10,000 kilowatts or more and any coal gasification facility. The tax is in lieu of property taxes on the facility, but the land on which the facility is located remains subject to local property taxes. The coal conversion tax for an electric generating facility is imposed at a rate of .65 mill times 60 percent of the installed capacity of the facility times the number of hours in the taxable period and an additional tax of .25 mill per kilowatt-hour of electricity produced for sale. For coal gasification plants, the tax is imposed at the greater of 4.1 percent of gross receipts or 13.5 cents per 1,000 cubic feet of synthetic natural gas produced for sale.

Coal conversion tax revenues are allocated 15 percent to the producing county and 85 percent to the state general fund, except the separate tax of .25 mill per kilowatt-hour produced for sale and, through 2009, the first $41,666.67 each month from coal gasification plant tax revenues must be deposited in the state general fund. Coal conversion tax revenues received by a county are allocated 30 percent among cities, 30 percent among school districts, and 40 percent to the county general fund.

Among the changes in Senate Bill No. 2299 (2001) was a change in the tax status of the Heskett generating station in Morton County, which was an issue that arose in earlier discussions of the Electric Industry Competition Committee. Under previous law the Heskett station was excluded from the definition of a coal conversion facility because the production capacity of its two generating units was less than the threshold for application of the coal conversion tax. The 2001 legislation reduced the threshold for inclusion as a coal conversion facility, changing the status of the Heskett station from payment of property taxes to payment of coal conversion taxes. A special provision was added to the coal conversion tax law to incorporate a "hold harmless" provision for Morton County and taxing districts in Morton County to ensure that the county and taxing districts would continue to receive at least as much coal conversion tax revenue as was received from the property taxes for the facility for taxable year 2001.

Property Taxes

Under Article X, Section 4, of the Constitution of North Dakota, property used to furnish or distribute electricity is subject to central assessment by the State Board of Equalization as prescribed by law. Under Article X, Section 5, of the Constitution of North Dakota, the Legislative Assembly may exempt any personal property from taxation and may classify any property other than land as personal property.

Property of investor-owned utilities is subject to property taxes. All operative property is subject to assessment by the State Board of Equalization under NDCC Chapter 57-06. Operative property is defined to include all property reasonably necessary for use by a public utility in operation and conduct of the business engaged in by the company. Property subject to assessment by the State Board of Equalization has its valuation assigned to the taxing district in which the property is located. Assessments of continuous lines of property, such as transmission and distribution lines, are allocated among counties based on the prorated portion of mileage of such lines in each county. The Tax Commissioner certifies to the county auditor of each county the total assessed valuation of centrally assessed property and the amount in each assessment district within the county. Local tax levies are then applied against the valuation in the same manner used for other property subject to local property taxes.

Property of a municipal utility or municipal power agency is exempt from property taxes under Article X, Section 5, of the Constitution of North Dakota.

Property, other than land, owned by a rural electric cooperative and used as operative property or part of a generating facility is exempt from property taxes and is instead subject to gross receipts taxes under NDCC Chapter 57-33, which applies to operative property of rural electric cooperatives, or Chapter 57-33.1, which applies to cooperative electrical generating plants. Taxes imposed under each of these chapters is in lieu of property taxes, except taxes on land (which may not be exempted under Article X, Section 5, of the Constitution of North Dakota). Land owned by a rural electric cooperative is subject to local assessment and payment of property taxes. In addition, Basin Electric Power Cooperative pays locally assessed property taxes on its headquarters land and buildings because the building is not a part of the cooperative's operative property or part of a generating facility.

Wind generation facilities are subject to differing taxes depending on ownership. A wind generation unit owned by a rural electric cooperative is exempted from property taxes but subject to the 2 percent gross receipts tax. A wind generation unit with a nameplate generation capacity of at least 100 kilowatts owned by an investor-owned utility is subject to property taxes but if completed before 2011 receives a reduced taxable valuation under NDCC Section 57-02-27.3 of 3 percent of assessed value (only 30 percent of the usual taxable valuation for centrally assessed property).

Gross Receipts Taxes and Transmission Line Taxes

A 2 percent tax on gross receipts is imposed on rural electric cooperative transmission and distribution cooperatives. A 2 percent gross receipts tax also applies to rural electric cooperative generation cooperatives, but only if a generation facility is not subject to coal conversion taxes under NDCC Chapter 57-60. An additional tax of $225 per mile applies to rural electric cooperative-owned transmission lines of 230 kilovolts or larger under Section 57-33.1-02.

Gross receipts taxes from transmission and distribution cooperatives are allocated among counties in proportion to the miles of line in each county. Tax

revenues received by a county are allocated among taxing districts in proportion to the miles of line in each taxing district. Gross receipts taxes from a cooperative electrical generating plant during the first two years of operation go entirely to the county in which the facility is located. After the first two years of operation, taxes from an electrical generating plant are allocated so that the first $50,000 goes to the county, the second $50,000 is split evenly between the county and the state general fund, and all additional revenue is divided 25 percent to the county and 75 percent to the state general fund. Cooperative electrical generating plant gross receipts taxes received by the county are allocated 15 percent to cities, based on population; 40 percent to the county general fund; and 45 percent to school districts, based on average daily attendance. Transmission line taxes under NDCC Section 57-33.1-02 are allocated among counties in proportion to the miles of line in each county and are allocated entirely to the county general fund.

Passage of House Bill No. 1348 (2001) increased the rate of the transmission line tax to $300 per mile for a transmission line of 230 kilovolts or larger initially placed in service on or after October 1, 2002. However, House Bill No. 1348 also created an exemption from this tax for the first year after a new transmission line is placed in service and provided a 75 percent reduction for the second year, 50 percent reduction for the third year, and 25 percent reduction for the fourth year of operation of the transmission line. House Bill No. 1348 also established a distinction between a transmission line and a distribution line. A transmission line is one which operates at a voltage of 41.6 kilovolts or more, and a line operating at lower voltage is a distribution line.

Another significant change made by House Bill No. 1348 was that a new transmission line owned by an investor-owned utility is exempt from property taxes and subject to taxation in the same manner as taxes apply to transmission lines of rural electric cooperatives for lines placed in service on or after October 1, 2002. Such lines of investor-owned utilities are subject to a tax of $300 per mile and are entitled to exemption for the first year of operation and a reduction of 75 percent for the second year, 50 percent for the third year, and 25 percent for the fourth year of operation of the transmission line.

A problem with "pancaking" of gross receipts taxes for certain rural electric cooperatives was described to the Electric Industry Competition Committee in 1997. The compounding of taxes arose because generation and transmission cooperatives pay a 2 percent gross receipts tax on generated electricity and that electricity is again subjected to a 2 percent gross receipts tax at the distribution level. The problem applied to rural electric cooperatives that purchased power through intermediate transmission cooperatives in North Dakota. Transmission cooperatives purchasing power from Basin Electric Power Cooperative and blending it with hydroelectric power purchased from the Western Area Power Administration were subjected to a 2 percent gross receipts tax on revenue from member cooperatives purchasing power. The member cooperatives were subjected to a 2 percent gross receipts tax on resale of power to consumers. In 1999 the Association of Rural Electric Cooperatives announced to the Electric Industry Competition Committee that a change in contractual arrangements had been made to provide that 95 percent of power previously purchased by an intermediate cooperative from Basin Electric would instead be purchased directly from Basin Electric by individual cooperatives. This arrangement allowed 95 percent of power purchased by individual cooperatives to be subjected to only one 2 percent gross receipts tax, thus avoiding most of the impact of the pancaking effect.

Gross receipts taxes do not apply directly to investor-owned utilities, municipal utilities, municipal power agencies, or power marketers but may be embedded in the cost of electricity purchased from a rural electric cooperative.

City Privilege Tax

Under NDCC Section 57-33-04, a city is allowed to impose a privilege tax on the value of electric distribution facilities of a rural electric cooperative furnishing power to city consumers. The tax must be reduced by the amount of gross receipts tax allocated to the city.

Municipal Utility Revenues

A municipal utility is limited by NDCC Section 40-33-12 to a maximum of 20 percent of its annual gross revenues which may be transferred by the municipal utility to the general fund of the city. It appears that Section 40-33-12 would allow a greater amount of gross revenues to be transferred if approved by electors of the city at a regular city election.

Testimony

To facilitate the electric industry taxation study, the committee requested the Association of Rural Electric Cooperatives and investor-owned utilities reprise their electric industry taxation study working group to compile updated taxation information for the committee's use. The electric industry taxation study working group compiled statistics on generation capacity, transmission line miles, electric sales, and taxes.

Concerning statistics relating to the generation of electricity, information compiled by the group shows the state's electric generation--nearly 4,000 megawatts of generation capacity--is fueled largely by coal. Hydropower from the Garrison Dam contributes almost 550 megawatts of generation capacity. There are 80 megawatts of small generation peaking plants and 67 megawatts of potential wind generation. While coal and hydropower generation remain largely unchanged over the past several years, nearly all of the wind generation has been added during the past two years. The wind generation includes two 900-kilowatt turbines, owned and operated by Minnkota Power Cooperative near Valley City and Petersburg; two 1.3-megawatt turbines south of Minot, owned and operated by Basin Electric Power Cooperative, and 62 megawatts of wind generation built in the Edgeley-Kulm area by FPL Energy

under long-term purchase contracts to supply wind energy to Basin Electric Power Cooperative and Otter Tail Power Company. Total generation capacity in North Dakota is 4,658 megawatts.

North Dakota's electric utility industry has paid over $73 million in coal conversion taxes over the past five years, with the amount of taxes increasing from approximately $12 million in 1998 to nearly $21 million in 2002. This increase in coal conversion revenue resulted from legislative changes adopted in 2001. The most significant change was an increase in the coal conversion tax formula and the corresponding decrease in coal severance tax formula. In addition, the Legislative Assembly amended the coal conversion tax to make the tax applicable to smaller coal-based plants. Thus, the 86-megawatt Heskett plant in Mandan owned by Montana-Dakota Utilities Company is now subject to the coal conversion tax instead of the public utility property tax.

Concerning the transmission function, representatives of the electric industry reported that the state has over 12,500 miles of transmission lines, including over 5,000 miles owned by rural electric cooperatives, nearly 5,000 miles owned by investor-owned utilities, and more than 2,000 miles of lines owned by the Western Area Power Administration. There has been almost a 3 percent increase in total transmission line miles in the past two years. Rural electric cooperatives pay a $225 per mile tax on high-voltage transmission lines of 230 kilovolts or more. Transmission lines of all sizes owned by investor-owned utilities are subject to centrally assessed ad valorem property taxes. Taxes on transmission lines from 41.6 kilovolts to less than 230 kilovolts owned by rural electric cooperatives are collected under the provisions of the gross receipts tax. Legislation enacted during the 58th Legislative Assembly (2003) grants both investor-owned utilities and rural electric cooperatives a four-year declining property tax exemption for transmission lines rated at 230 kilovolts or larger placed in service after October 1, 2002. Following the four-year declining property tax exemption, the affected transmission line facilities will be taxed at $300 per mile for both rural electric cooperatives and investor-owned utilities. In addition to the high-voltage transmission line tax, cooperatives pay gross receipts tax, in lieu of personal property tax, on electric facilities and on transmission lines smaller than 230 kilovolts. Cooperatives also pay real estate taxes on the unimproved value of their real estate. As a federal agency, the Western Area Power Administration lines are not subject to state taxation. Municipal utilities, which own approximately 10 miles of transmission line in the state, do not pay property taxes on these facilities. The state collects approximately $411,000 in transmission line taxes annually.

Concerning retail sales of electricity, the electric industry taxation study working group reported that for the three-year period from 2000 to 2002, investor-owned utilities had approximately 54 percent of retail sales, cooperatives had approximately 43 percent, and municipal electric utilities accounted for 3 percent of total retail electricity sales in the state.

Rural electric cooperatives pay a gross receipts tax. The gross receipts tax is a tax in lieu of a personal property tax and is a 2 percent tax on all cooperative revenue, excluding the sale of capital assets and revenue attributable to electric generation plants subject to the coal conversion tax. The 58th Legislative Assembly added two additional exemptions. First, revenue from wholesale sales of electric energy to cooperatives subject to paying the gross receipts tax on retail sales on the energy is exempt. This exemption is expected to reduce future gross receipts tax payments by Central Power Electric Cooperative and Upper Missouri Generation and Transmission Cooperative by slightly more than $100,000 each per year. Second, revenue from the sale of wind energy from a North Dakota wind energy facility subject to centrally assessed property taxation is exempt from gross receipts taxation. This puts North Dakota wind energy sales on the same footing as sales from coal conversion facilities. Before enactment of the 2003 legislation to address duplicate gross receipts taxation, member cooperatives of Central Power Electric Cooperative and Upper Missouri Generation and Transmission Cooperative executed contract amendments with their power suppliers to purchase most of their electricity directly from Basin Electric Power Cooperative and not through their intermediate transmission cooperative. This change was implemented in the last quarter of 1999 and accounts for the somewhat lower taxes paid by Central Power Electric Cooperative and Upper Missouri Generation and Transmission in 2000.

A city is authorized by law to impose a privilege tax on the value of rural electric cooperative-owned facilities within the city. When a city imposes a privilege tax, the amount of this tax is reduced by the amount of the gross receipts tax revenue the city receives. During 2002 only the city of New Town imposed this tax.

Investor-owned utilities pay a public utility property tax. This tax is based upon the value of the utility's entire electric system, including real estate, distribution, transmission, and generation that is not subject to the coal conversion tax. In 2001 the Legislative Assembly amended the law to make the coal conversion tax applicable to smaller-based load power plants, including the 86-megawatt Heskett plant owned by Montana-Dakota Utilities Company, which was previously included as part of Montana-Dakota Utilities Company's property subject to the utility property tax.

Concerning state income taxes, as nonprofit cooperative associations, rural electric cooperatives are generally exempt from federal and state income taxation under Section 501(c)(12) of the Internal Revenue Code. However, rural electric cooperatives are subject to income taxes on their electric operations when more than 15 percent of their revenues are derived from nonmember sources. In addition, should a rural electric cooperative engage in a nonelectric utility business, any income derived from the operation is most likely subject

to state and federal income taxes as unrelated business income.

The electric industry taxation study working group reported that distribution and generation and transmission cooperatives paid an average of $5,650,330 in gross receipts taxes for the years 1998 through 2002. The working group reported that the state's investor-owned utilities paid an average of $6,134,623 in public utility property taxes for the years 1998 through 2002. The working group reported that the state's distribution cooperatives and generation and transmission cooperatives paid an average of $670,994 in electric utility real estate taxes for the year 2000 and the year 2002. The working group reported that the state's investor-owned utilities paid an average of $2,395,898 in North Dakota corporate income taxes on electric operations for the years 1998 through 2002. The working group reported that the state's municipal power systems paid an average of $1,877,205 in lieu of taxes for the years 1998 through 2002.

The working group reported that North Dakota electric utilities paid an average of $33,721,247 in taxes for the years 2000 through 2002. This includes $16,464,937 in coal conversion taxes, $6,190,235 in public utility property taxes, $670,994 in real estate taxes, $411,435 in transmission line taxes, $5,531,268 in gross receipts taxes, $2,932 in city privilege taxes, $2,430,539 in income taxes, and $2,018,908 in payments in lieu of taxes.

The committee considered a bill draft relating to the taxation of generation, transmission, and distribution of electric power. Representatives of the Association of Rural Electric Cooperatives testified that the proposal was based on three principles--taxes be revenue-neutral; taxes be fair and equitable; and taxes be easy and inexpensive to administer, collect, and distribute. The proposal would have eliminated the public utility property tax on investor-owned utilities, the 2 percent gross receipts and city privilege taxes on rural electric cooperatives, and the high-voltage transmission line tax on rural electric cooperatives. The proposal would have retained the coal conversion tax, wind tax incentives under NDCC Section 57-02-27.3, property taxes on land owned by electric utilities, and city franchise fees on electric utilities. Concerning the generation function of producing electricity, the proposal would have left the current coal conversion tax in place, continued tax incentives for wind generation facilities, and made the conversion tax applicable to noncoal or wind generation plants of five megawatts or more. Concerning the transmission function of electricity generation, the proposal would have taxed all transmission facilities on a line-mile basis based on an increasing tax based on transmission line voltage. The proposal would have taxed transmission facilities of less than 50 kilovolts at $75 per mile, transmission facilities of 50 to 99 kilovolts at $150 per mile, transmission facilities of 100 to 199 kilovolts at $300 per mile, transmission facilities of 200 to 299 kilovolts at $450 per mile, transmission facilities of 300 to 399 kilovolts at $600 per mile, and transmission facilities at 400 kilovolts and above at $900 per mile. Concerning the distribution fund of electricity production, the proposal would have implemented a two-part formula--a flat tax of 52 cents per megawatt-hour of delivered power and .88 percent of revenue collected on the retail sale of kilowatt-hours of electricity. Although a political decision, proponents testified that in the interest of presenting a complete proposal it contained an allocation of tax revenues. Under the proposal, revenue from the transmission line tax would have been allocated to counties and taxing districts based on transmission line miles and rates of tax of each taxing district. Revenue from the megawatt-hour tax would have been allocated to the county in which the retail sale was made and allocated among taxing districts in proportion to their most recent property tax levies in dollars. Revenue from the tax on retail revenue would have been allocated according to the ratio of miles of distribution line in a county compared to the total number of miles of distribution lines the utility had in the state. Revenue would have been allocated among taxing districts in proportion to their most recent property tax levies in dollars.

Proponents testified that the proposal was revenue-neutral with both the current and proposed tax systems raising approximately $11.2 million on transmission and distribution property, was fair to utilities with benefits and burdens shared among rural electric cooperatives and investor-owned utilities and rural electric cooperatives and investor-owned utilities being taxed the same, and was easy to administer as the plan was understandable and easy to apply.

The proposal would have reduced taxes paid by distribution cooperatives by $330,147, increased taxes paid by generation and transmission cooperatives by $249,793, and increased taxes paid by investor-owned utilities by $88,225. All distribution cooperatives except Cass County Electric Cooperative and Mor-Gran-Sou Electric Cooperative would have realized a decrease in tax burden. Under the proposal, taxes would have increased for Basin Electric Power Cooperative, Square Butte Electric Cooperative, and Great River Energy, while decreasing for Minnkota Power Cooperative, Central Power Cooperative, and Upper Missouri Generation and Transmission Cooperative. Under the proposal, taxes would have decreased for Xcel Energy, Inc., and Otter Tail Power Company while Montana-Dakota Utilities Company would have realized an increase of $243,485.

Proponents of the proposal testified there were several good reasons to support the plan. First, the in lieu taxes would have been uniform for all investor-owned utilities and rural electric cooperatives so the proposal met the test of fairness. Second, the proposal would have minimized tax shifting between rural electric cooperatives and investor-owned utilities. Although individual utilities might have paid more or less in taxes, overall the tax shift between investor-owned utilities and rural electric cooperatives would have been only 1.5 percent. Third, the tax formulas would have been easy to calculate and administer. Fourth, the in lieu

taxes would have been predictable, which led to the final benefit which would have been that the proposal guaranteed that overall the plan would raise approximately the same amount of revenue for local taxing districts as the current taxation system of ad valorem and gross receipts taxes that would be replaced. In addition, if the electric industry grows, political subdivisions automatically would have seen increased tax revenues in future years.

In addition to the Association of Rural Electric Cooperatives, the proposal was supported by Cass County Electric Cooperative, Basin Electric Power Cooperative, Verendrye Electric Cooperative, Capital Electric Cooperative, Slope Electric Cooperative, and Dakota Valley Electric Cooperative.

Representatives of Montana-Dakota Utilities Company testified in opposition to the bill draft. They testified property taxes should be taxes on the value of property, not an "in lieu of" system that is confusing and contained opportunity for mischief by shifting taxes from one property owner to another. They testified the proposal violated the concept of simplicity and easy understandability and that a tax on transmission lines, but not including substations, appeared to be an effort to achieve a predetermined effect, i.e., a minimalization of tax increases for the large-voltage transmission lines. They testified the proposal would have imposed an administrative burden on investor-owned combination utility companies, such as Montana-Dakota Utilities Company, because it would have subjected their property to two different tax systems--one for electric operations and one for natural gas operations.

The committee considered an amendment to the bill draft which would have limited the transmission line mile tax contained in the proposal to alternating current lines and imposed a separate tax on direct current lines. The tax on direct current lines would have provided that for transmission lines that operate at a nominal operating direct current voltage of less than 300 kilovolts, a tax of $450 would be imposed for taxable year 2006, $500 for taxable year 2007, $550 for taxable year 2008, $600 for taxable year 2009, and $650 for taxable years after 2009 for each mile or fraction of a mile. The amendment also would have imposed a tax for transmission lines that operate at a nominal operating direct current voltage of 300 kilovolts or more of $900 for taxable year 2006, $950 for taxable year 2007, $1,000 for taxable year 2008, $1,050 for taxable year 2009, and $1,100 for taxable years after 2009 for each mile or fraction of a mile. The amendment also would have deleted the requirement that revenue collected on the retail sale of kilowatt-hours of electricity be allocated according to the ratio that the miles of distribution line in a county bears to the total number of distribution lines the utility has in the state and would have required that all revenue be allocated to the county in which the retail sale was made and allocated among taxing districts in proportion to their most recent property tax levies in dollars.

This amendment was opposed by the Association of Rural Electric Cooperatives. Representatives of the association testified that the paramount reason for not setting higher tax rates for direct current transmission lines is that North Dakota has a strong economic interest in encouraging the export of its lignite and wind resources, and direct current transmission lines are one way to export the state's energy resources economically. If the state were to impose too great a tax burden on its high-voltage transmission lines, it would discourage further transmission investment at a time when the state should be doing everything possible to promote energy development for export and that a further increase of these taxes is not warranted, particularly in light of the competitive challenges faced by lignite-fired generation. In addition, a representative of Slope Electric Cooperative testified that no matter where the end sale occurs, transmission lines and other infrastructure must be constructed to serve the load. Thus, the representative testified that it would be unfair to direct all of the revenue to taxing districts where the load is located rather than distributing some of the revenue more broadly throughout the service area of the cooperative.

The committee considered a bill draft that would have eliminated gross receipts taxes for rural electric cooperatives and would have subjected their property to centrally assessed ad valorem property taxes. Proponents of this proposal testified that rural electric cooperative property would be taxed in exactly the same manner in which investor-owned property is taxed. Proponents testified that the central assessment method is a well-developed system for determining value for investor-owned property and an appropriate methodology could be developed to extend this method to rural electric cooperative property, even if some of their original records were lost or unavailable.

A representative of Utility Shareholders of North Dakota testified that a switch in policy that would tax electric cooperatives on an ad valorem basis, the same as shareholder-owned utility companies are taxed, would be a positive move for all consumers, taxpayers, and competitors.

The committee requested that the state supervisor of assessments prepare an analysis of converting Verendrye Electric Cooperative to a centrally assessed property taxation system. The committee learned that it was not possible for Verendrye Electric Cooperative to provide a schedule showing an original cost of its property in each taxing district because cooperatives were not required to collect this information. However, that information is necessary to calculate the tax amount due each taxing district and to compare it with the tax amount each taxing district received from Verendrye Electric Cooperative's gross receipts tax. Because it was not possible to make these calculations, the state supervisor of assessments testified that it was not possible to estimate the tax shift among taxing districts which would occur if Verendrye Electric Cooperative paid centrally assessed property tax instead of gross receipts tax and locally assessed property taxes on its land. Neither could Verendrye Electric Cooperative's total property tax, if it were centrally assessed, be estimated accurately because the Tax Department did not have the required information to multiply individual taxing district mill rates by the taxable value located in each taxing district.

However, the state supervisor of assessments testified that preparing a sample assessment for Verendrye Electric Cooperative for 2003 using Verendrye Electric Cooperative's capital structure and returns resulted in an estimated 2003 property tax of $634,569.39, while under current law Verendrye Electric Cooperative paid $363,023.91. Using the investor-owned utility capital structure and rates, the state supervisor of assessments testified that the estimated 2003 property tax for Verendrye Electric Cooperative was $263,042.95, compared to $363,023.91 paid.

Representatives of the Association of Rural Electric Cooperatives testified that in light of the study conducted by the state supervisor of assessments, the ad valorem system would not be easy to administer nor could one predict whether it would be revenue-neutral to political subdivisions. In addition, it would take each cooperative several years of work to assign investment costs properly to political subdivisions. They testified that the system would be subjective, unpredictable, and difficult to administer. They testified that implementing the ad valorem property tax plan would be very burdensome to electric cooperatives, require added staff for the Tax Department to administer the plan, and lead to unpredictable tax impacts on cooperatives and unknown revenue impacts on local taxing districts.

Proponents of the proposal noted that the Tax Commissioner would be able to assign a cost to rural electric cooperative property in instances in which adequate records of original cost were not available. Investor-owned utility representatives also noted that Minnesota, Montana, Wyoming, and Colorado, as well as other states, use an ad valorem property tax system for rural electric cooperatives. As a result, those states have already determined a system value for those generation and transmission cooperatives that own property in those states, a system value that could be used to value cooperative property in North Dakota.

Conclusion

The committee makes no recommendation concerning its study of electric industry taxation.

WIND ENERGY DEVELOPMENT STUDY

Background

Senate Bill No. 2310 (2003) provided that the Legislative Council consider studying, during the 2003-04 interim, issues related to wind energy development in this state, including wind turbine siting requirements, wind energy development contract provisions, the potential economic benefits of wind energy development for farmers and ranchers, the potential adverse impacts of wind energy development on landowners, and the impact of wind energy development on organized labor, especially in the energy industry. The Legislative Council, however, revised this study by directive. At its May 16, 2003, meeting to prioritize resolutions and bills for study, the Legislative Council removed the language relating to wind turbine siting requirements and the impact of wind energy development on organized labor, removed the words "for farmers and ranchers" and "on landowners," and directed that the study include consideration of transmission of electrical energy and the impact on the electric energy industry of wind energy development.

As revised by the Legislative Council, Senate Bill No. 2310 (2003) provided for a study of issues related to wind energy development in this state, including wind energy development contract provisions, the potential economic benefits of wind energy development, the potential adverse impacts of wind energy development, consideration of transmission of electrical energy, and the impact on the electric industry of wind energy development.

The National Wind Coordinating Committee estimates 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.

According to the American Wind Energy Association, installed wind energy generating capacity totals 4,685 megawatts and generated approximately 11.2 billion kilowatts of electricity, less than 1 percent of electricity generation in the United States. By contrast the American Wind Energy Association estimates the total amount of electricity that could potentially be generated from wind in the United States at 10,777 billion kilowatts annually, three times the electricity generated in the United States today. North Dakota ranks first among the top 20 states for wind energy potential, as measured by annual energy potential in billions of kilowatt hours, factoring in environmental and land use exclusions for wind Class 3 and higher. The top 20 states are listed in the following table:

1	North Dakota	1,210
2	Texas	1,190
3	Kansas	1,070
4	South Dakota	1,030
5	Montana	1,020
6	Nebraska	868
7	Wyoming	747
8	Oklahoma	725
9	Minnesota	657
10	Iowa	551
11	Colorado	481
12	New Mexico	435
13	Idaho	73

14	Michigan	65
15	New York	62
16	Illinois	61
17	California	59
18	Wisconsin	58
19	Maine	56
20	Missouri	52

Source: An Assessment of the Available Windy Land Area and Wind Energy Potential in the Contiguous United States, Pacific Northwest Laboratory, 1991.

Similarly, the Department of Energy's National Renewable Energy Laboratory has identified North Dakota as having the greatest wind resource of any of the lower 48 states. North Dakota also has few environmental restraints regarding land availability. However, the Division of Community Services, Department of Commerce, has identified a number of issues that must be addressed before significant wind energy development in North Dakota. The single biggest obstacle identified by the Division of Community Services is constraints on the state's existing transmission grid. North Dakota currently exports nearly 60 percent of the power generated within the state, and it is likely that most wind-generated electricity also will be exported. Thus, additions to the current transmission grid will be necessary for a significant generation expansion in the state, regardless of fuel source. Other issues related to the development of wind energy noted by the Division of Community Services include identification of the market for wind energy and possible avian issues related to raptors and nesting waterfowl.

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. For example, an article in the August 24, 2003, edition of the *Bismarck Tribune* noted that the 41 wind turbines being constructed east of Kulm will each generate $5,000 annually in local tax revenue. The wind farm is located in the Kulm School District, which will receive 60 percent of the tax revenue, approximately $120,000 per year.

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 may recognize significant increased income while retaining use of that landowner's 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 (2001) enacted three bills concerning wind energy. House Bill No. 1223 allowed installations on property leased by the taxpayer to qualify for long-form income tax credit for installation of geothermal, solar, or wind energy devices. 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, the credit 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 provided 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 reduced 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

The energy program manager for the Department of Commerce testified that in order to export electricity generated by wind turbines, a solution must be found for the transmission problem. The chairman of the steering committee of Coteau Hills Wind Energy, LLC, testified that the wind turbine farm near Edgeley is approximately 10 square miles--2 miles by 5 miles. There are 41 towers and turbines in the wind farm. The chairman cautioned that the Legislative Assembly should move cautiously and observe the development of the state's wind energy resource before enacting any legislation affecting the wind energy industry. A landowner from Kulm testified that the Legislative Assembly should not micromanage the relationship between wind energy producers and landowners but allow landowners to negotiate with wind energy developers on a one-to-one basis. The legislative and regulatory affairs manager for FPL Energy testified that the wind energy tax incentives enacted in 2001 were instrumental in drawing wind energy developers to North Dakota and without these incentives the $61 million invested in the Edgeley, Kulm, and Ellendale wind farm would have been invested in another state.

The president of Harnessing Dakota Wind testified that the committee should recommend legislation providing that options to lease land for wind energy development terminate five years after the date the option is granted; prohibiting confidentiality provisions in wind energy contracts, options, and leases; establishing decommissioning restoration standards, timelines, and bonding provisions for the removal of wind turbine equipment and the restoration of land used for wind turbines; prohibiting the severance of wind rights from the surface estate; and establishing spacing requirements for wind turbines. The president of Harnessing Dakota Wind also urged the committee to develop and set a wind power objective for the state.

Representatives of the Powering the Plains Project testified on renewable and carbon-neutral energy production efforts in North Dakota and the Upper Midwest. They reported that the Powering the Plains Project has learned that large increases in renewable energy are achievable; encouraging renewable energy and reducing greenhouse gas emissions can drive innovation, job creation, and growth; ownership and scale of renewable energy projects is important; a 30- to 50-year vision with bold and measurable targets and clear policy incentives is critical; comprehensive strategies yield maximum results; and leadership and public support matter more than resources or population base.

The committee reviewed a bill draft relating to a renewable electricity credit trading and tracking system by the Public Service Commission. The bill draft would have allowed the Public Service Commission to establish a program for tradable credits for electricity generated from renewable sources, would have allowed the commission to facilitate the trading of renewable electricity credits between states, and would have applied to all public utilities, including electric cooperatives and municipal electric utilities. One reason for considering the bill draft is that non-Minnesota utilities may only trade renewable electricity credits with firms located in Minnesota if the states in which those utilities operate have enacted legislation similar to Minnesota legislation regarding a program for tradable credits for electricity generated from renewable sources.

Representatives of the Powering the Plains Project testified that a renewable energy credit is a mechanism that allows a utility or nonutility consumer of electric power to purchase a credit from another utility or generator rather than invest in renewable energy generation itself. The buyer of the credit may be subject to regulatory requirements to supply a percentage of electricity from renewable sources to its retail customers, or it may simply wish to voluntarily support the development and use of renewable energy through credit purchases. A credit tracking system records and verifies the creation of renewable credits and their subsequent transaction between parties. A tracking system provides accountability and gives buyers of credits confidence that the credits in question represent real renewable electricity produced and that they have not been double-counted or already sold to another party. The representative of the Powering the Plains Project testified that the legitimacy, both perceived and real, of credits in the marketplace is essential to creation of a robust trading system and will provide an important economic stimulus for development of wind and other forms of renewable energy in North Dakota.

Conclusion

The committee makes no recommendation concerning its study of wind energy development.

LIGNITE VISION 21 PROGRAM

The committee received updates from the president of the Lignite Energy Council throughout the interim concerning the Lignite Vision 21 Program. The objective of the Lignite Vision 21 Program is to build a clean coal generating station in North Dakota. The Lignite Vision 21 Program is important for the state because one 500-megawatt power plant means three million more tons of coal mined; 1,300 more jobs; $140 million in business volume; and $6 million more in tax revenue to the state. The strategy of the state and the Lignite Energy Council contained in the Lignite

Vision 21 Program is to lower the risk to developers so lignite is the fuel of choice by lowering overall project costs. The program is designed to help identify problems, find solutions, eliminate government "showstoppers," and prevent government delays in siting and constructing a new power plant in North Dakota. The program is industry-driven and market-based and the bottom line of the program is to activate state help for the benefit of lignite developers. The Industrial Commission has approved $10 million in matching funds for the development phase of each project and $2 million of nonmatching funds for management, feasibility assistance, and marketing efforts. The Industrial Commission has designated the Lignite Energy Council to manage the Lignite Vision 21 Program.

The president of the Lignite Energy Council reported that the Lignite Vision 21 Program has two applicants under contract with the Industrial Commission--MDU/Westmoreland Coal Company and Great Northern Power Development. MDU/Westmoreland Coal Company is examining a site near Gascoyne and Great Northern Power Development is examining a site near South Heart. Both applicants have completed preliminary studies, including environmental, water availability, mine plan, socio-economic, generation technology, transmission, coal quality, site, economic, and market studies. All of these studies were successful. MDU/Westmoreland Coal Company is evaluating the economics of 175-, 250-, and 500-megawatt plants. The Industrial Commission has approved Phase II project funding for Great Northern Power Development and that company submitted its air quality impact modeling protocol to the State Department of Health on August 27, 2003. Great Northern Power Development is now pursuing a power purchase agreement.

The Lignite Vision 21 Program has identified two critical challenges still remaining in building projects in North Dakota--environmental issues and transmission issues. The three primary issues in the environmental area are the prevention of significant deterioration, mercury, and visibility issues.

The president of the Lignite Energy Council testified that concerning the prevention of significant deterioration, the issue is whether there are "modeled" exceedances of air quality standards in Class I areas. The primary Class I area in North Dakota is Theodore Roosevelt National Park. The president of the Lignite Energy Council testified that the actual measurements show no deterioration and the trend in sulfur dioxide emissions is down. North Dakota is one of 16 states in compliance with all ambient air quality standards and North Dakota air is clean and getting cleaner. The State Department of Health has conducted two hearings concerning the prevention of significant deterioration and the State Health Officer determined there are no violations of Class I increments, no deterioration of Class I air quality, and the state's state implementation plan and prevention of significant deterioration program are adequate. From the state and the Lignite Energy Council's perspective, solutions to these problems exist which protect air quality from deterioration, allow existing operations to operate at current levels, and allow Lignite Vision 21 Program Projects to be permitted.

The president of the Lignite Energy Council testified that the other significant problem facing construction of a new coal generating station in North Dakota is transmission. The Lignite Energy Council has been requested by the Congressional Delegation, Governor, and the Industrial Commission to assist with the resolution of North Dakota export constraints for the Lignite Vision 21 Program. The future growth of the lignite industry is largely dependent on the resolution of North Dakota export constraints. Adding new transmission is difficult because of both physical and regulatory constraints and uncertainties that lead to increased financial risk for the development of new transmission. Physical constraints include long transmission distances and the operation of a complex transmission system. Solutions include adding equipment to maximize existing lines, upgrading existing lines, and building new lines. There are a number of transmission constraints between North Dakota and its logical energy markets. In addition, the regulatory climate for transmission is in flux and uncertainty exists about the ability to get transmission permitted and built and the long-term cost of building new transmission. The Industrial Commission has formed a coal/wind transmission coalition to identify and advocate solutions to resolve transmission constraints that limit the export of electrical energy. Committees have been formed to examine transmission, technical solutions, rules, regulations, and policies; national interest transmission bottlenecks; and siting, routing, and construction of new transmission. In summary, the president of the Lignite Energy Council reported that environmental problems may be difficult but resolution of the transmission problem is key to construction of a new coal generating station in North Dakota.

EMERGENCY SERVICES COMMITTEE

The Emergency Services Committee was assigned two studies. House Concurrent Resolution No. 3053 directed a study of the state's emergency management system, the impact of federal emergency reorganization on the state's emergency operations plan, and the emergency management preparedness of state agencies and local governments. House Concurrent Resolution No. 3054 directed a study of the state's public health unit infrastructure and the ability of the public health units to respond to public health issues, including disease and other physical health, environmental, and disaster-related issues.

The Legislative Council also assigned the committee the responsibility, under North Dakota Century Code (NDCC) Section 57-40.6-11, to receive the annual report from State Radio on the operation of and any recommended changes in the emergency 911 telephone system standards and guidelines and, under Section 57-40.6-12, 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.

Committee members were Representatives Todd Porter (Chairman), William R. Devlin, Keith Kempenich, James Kerzman, Joe Kroeber, Andrew Maragos, Bob Martinson, Jon O. Nelson, Mary K. Nester, Clara Sue Price, and Gerald Uglem and Senators Robert S. Erbele, Ralph L. Kilzer, Tim Mathern, and Michael Polovitz. Representative Dale C. Severson was a member of the committee until his death on November 4, 2003, and Representative Janet Wentz was a member of the committee until her death on September 15, 2003.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2004. The Council accepted the report for submission to the 59th Legislative Assembly.

EMERGENCY MANAGEMENT SYSTEM STUDY

Background

The terrorist attacks on New York City and Washington, D.C., in September 2001 and the anthrax releases in October 2001 raised numerous questions regarding our country's ability to respond to disasters and public health emergencies. Closer to home, the derailment of a train and the release of anhydrous ammonia in Minot in January 2002 brought to light the need to evaluate the ability of local governments and the state to respond to emergency situations.

The Council on Foreign Relations, a nonpartisan national think tank, established an independent task force to evaluate the preparedness and adequacy of funding for emergency responders in the United States. The report of the task force, which was issued in June 2003, concluded that the United States is better able to respond to an emergency such as a terrorist attack than it was in 2001, but continues to be ill-prepared to handle a catastrophic attack. Among other things, the report suggested that fire departments generally have had enough radios to equip one-half of the firefighters on a shift and enough breathing apparatuses to equip one-third of the firefighters on a shift. The report also indicated that police departments have not had protective gear to safely secure a site following a weapons of mass destruction attack, and public health laboratories frequently lack basic equipment and expertise to adequately respond to a chemical or biological attack.

The report of the Council on Foreign Relations concluded that the country will inadequately fund critical emergency responder needs based upon the current levels. The report suggested that additional funds are needed for the following purposes:

- To extend the E-911 system nationally.
- To enhance urban search and rescue capabilities of major cities and the Federal Emergency Management Agency to address building collapses.
- To foster interoperable communications systems for emergency responders.
- To enhance public health preparedness by strengthening laboratories, disease tracking, and communications and by training public health professionals for biological, chemical, and radiological events.
- To strengthen emergency operations centers for local public safety coordination.
- To provide protective gear to firefighters.
- To enhance capacity of emergency medical technicians and paramedics to respond to mass casualty events.
- To develop surge capacity in hospitals and help prepare hospitals for a weapons of mass destruction attack.
- To enhance emergency agricultural and veterinary capabilities to respond to a national food supply attack.

United States Department of Homeland Security

After the September 2001 terrorist attacks, Congress passed the Homeland Security Act, which consolidated 22 federal domestic agencies under the Department of Homeland Security. The first priority of the department is to protect the nation against further terrorist attacks. In addition to providing a better-coordinated defense of the homeland, the department is responsible for protecting the rights of American citizens and enhancing public services, such as natural disaster assistance and citizenship services, by dedicating offices to those missions.

The Department of Homeland Security consists of four major directorates--border and transportation security, emergency preparedness and response, science and technology, and information analysis and infrastructure protection. In addition, the Secret Service and the

Coast Guard will be located in the Department of Homeland Security and will report directly to the Secretary of Homeland Security. The border and transportation security directorate is responsible for major border security and transportation operations. The emergency preparedness and response directorate, which includes the Federal Emergency Management Agency, oversees domestic disaster preparedness training and coordinates government disaster response. The purpose of the science and technology directorate is to utilize scientific and technological advantages when securing the homeland. The information analysis and infrastructure protection directorate is responsible for analyzing intelligence and information from other agencies involving threats to homeland security and evaluating vulnerabilities in the nation's infrastructure.

North Dakota Emergency Management

Constitutional Authority of the Legislative Assembly

Article XI, Section 7, of the Constitution of North Dakota sets forth the powers of the Legislative Assembly in the event of an emergency. That section provides:

> The legislative assembly, in order to ensure continuity of state and local governmental operations in periods of emergency resulting from disasters caused by enemy attack, shall have the power and immediate duty (1) to provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and (2) to adopt such other measures as may be necessary and proper for ensuring the continuity of governmental operations including, but not limited to, waiver of constitutional restrictions upon the place of transaction of governmental business, upon the calling of sessions of the legislative assembly, length of sessions, quorum and voting requirements, subjects of legislation and appropriation bill requirements, upon eligibility of legislators to hold other offices, residence requirements for legislators, and upon expenditures, loans or donations of public moneys. In the exercise of the powers hereby conferred the legislative assembly shall in all respects conform to the requirements of this constitution except to the extent that in the judgment of the legislative assembly so to do would be impracticable or would admit of undue delay.

North Dakota Disaster Act

North Dakota Century Code Chapter 37-17.1, the "North Dakota Disaster Act," addresses emergency management.

To minimize or avert the adverse effects of a disaster or emergency, the Governor may issue executive orders and proclamations that have the effect of law. If the Governor determines a disaster has occurred or a state of emergency exists, the Governor may declare a disaster or emergency by executive order or by proclamation. The executive order or proclamation must indicate the nature of the disaster or emergency, the area or areas threatened, the conditions that have brought it about, or make possible termination of the state of disaster or emergency. An executive order or proclamation must be disseminated promptly by means calculated to bring its contents to the attention of the general public, unless the circumstances attendant upon the disaster or emergency prevent or impede such dissemination, and it must be promptly filed with the Division of Emergency Management, the Secretary of State, and the county or city auditor of the jurisdictions affected. The state of disaster or emergency continues until the Governor determines that the threat of an emergency has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist. The Legislative Assembly by concurrent resolution may terminate a state of disaster or emergency at any time.

The declaration of a disaster or emergency activates the state and applicable local operational plans and authorizes the deployment and use of any forces to which the plan or plans apply and for use or distribution of supplies, equipment, and materials and facilities assembled, stockpiled, or arranged for a disaster or emergency. During the continuance of any state of disaster or emergency declared by the Governor, the Governor is commander-in-chief of the emergency management organization and of all other forces available for emergency duty.

The Governor may:

1. Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations, of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in managing a disaster or emergency.
2. Utilize all available resources of the state government as reasonably necessary to manage the disaster or emergency and of each political subdivision of the state.
3. Transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency management activities.
4. Subject to any applicable requirements for compensation, commandeer or utilize any private property if the Governor finds this necessary to manage the disaster or emergency.
5. Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if the Governor deems this action necessary for the preservation of life or other disaster or emergency mitigation, response, or recovery.
6. Prescribe routes, modes of transportation, and destinations in connection with an evacuation.

7. Control ingress and egress in a designated disaster or emergency area, the movement of persons within the area, and the occupancy of premises in the area.
8. Suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles.
9. Make provision for the availability and use of temporary emergency housing.
10. Make provisions for the control, allocation, and the use of quotas for critical shortages of fuel or other life- and property-sustaining commodities.
11. Designate members of the Highway Patrol, North Dakota National Guard, or others trained in law enforcement, as peace officers.

The Division of Emergency Management is a part of the Adjutant General's office. The director of the division is appointed by the Adjutant General. The Division of Emergency Management is required to prepare and maintain a state disaster plan and to assist in the development and revision of local disaster or emergency operations plans. In addition, the division is required to:

1. Coordinate the procurement and prepositioning of supplies, materials, and equipment for disaster or emergency operations.
2. Provide guidance and standards for local disaster or emergency operations plans.
3. Periodically review local disaster or emergency operations plans.
4. Coordinate state or state and federal assistance to local emergency management organizations.
5. Establish and operate or assist local emergency management organizations to establish and operate training programs and programs for emergency public information.
6. Make surveys of industries, resources, and facilities within the state, both public and private, as are necessary to carry out the purposes of NDCC Chapter 37-17.1.
7. Plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, coordinate payment for that use under terms and conditions agreed upon.
8. Establish access to a register of persons with types of training and skills important in mitigation, preparedness, response, and recovery.
9. Establish access to a register of equipment and facilities available for use in a disaster or emergency.
10. Prepare, for issuance by the Governor, executive orders, proclamations, and guidance as necessary or appropriate in managing a disaster or emergency.
11. Coordinate with the federal government and any public or private agency or entity in achieving any purpose of NDCC Chapter 37-17.1 and in implementing programs for disaster mitigation, preparation, response, and recovery.
12. Be the state search and rescue coordinating agency, establish access to a register of search and rescue equipment and personnel in the state, and plan for its effective utilization in carrying out the search for and rescue of persons when no violation of criminal laws exists.
13. Do other things necessary, incidental, or appropriate for the implementation of NDCC Chapter 37-17.1.

Each county is required to maintain an emergency management organization to serve the county and each city is required to either maintain an emergency management organization or participate in the countywide emergency management organization. Each local emergency management organization is required to prepare and maintain a local disaster or emergency operations plan.

The principal executive officer of a city or county may declare a local disaster or emergency, which may not be continued or renewed for a period in excess of seven days except by or with the consent of the governing board of the city or county. The effect of a declaration of a local disaster or emergency is to activate the response and recovery aspects of local disaster or emergency operations plans and to authorize the furnishing of aid and assistance.

The Division of Emergency Management is required to determine what means exist for rapid and efficient communications in times of a disaster or emergency. The division is also directed to encourage and assist counties and cities to conclude suitable arrangements for furnishing mutual aid in emergency management and encourage and assist political subdivisions to enter mutual aid agreements with other public and private agencies for reciprocal aid and assistance in responding to and recovering from actual and potential disasters and emergencies.

Testimony and Committee Considerations

The committee received extensive testimony regarding the organization, structure, responsibilities, and operation of the Division of Emergency Management. Since the terrorist attacks in September 2001, the Division of Emergency Management changed the focus of the emergency management infrastructure to enhance homeland security efforts. The division worked to form partnerships with state agencies, political subdivisions, and private entities to raise security awareness and improve the ability to mitigate and to respond to emergencies. In addition, the division prepared a state homeland security strategic plan which addresses prevention, preparedness, response, and recovery. The goals of the plan include:

1. Attaining radio communication interoperability among federal, state, local, and tribal first responders.
2. Developing a prevention, response, and recovery capability to ensure accurate deployment of resources.

3. Fostering the sharing of law enforcement sensitive information.
4. Upgrading state terrorism and weapons of mass destruction response capability.
5. Developing a tiered response capability to ensure statewide terrorism and weapons of mass destruction incident response.
6. Improving the ability of the state to prevent, respond, and recover from acts of terrorism or of weapons of mass destruction through refinement of the state emergency operations plan, state multihazard mitigation plan, jurisdictional emergency operations plans, and jurisdictional multihazard mitigation plans.
7. Assuring continuation of essential government functions in the state.
8. Training first responders and community leaders to recognize, prevent, and respond to a terrorism or weapons of mass destruction incident.
9. Institutionalizing command system training in the state.
10. Expanding and supporting homeland security training into established academic institutions.
11. Evaluating the competency of plans, training, and equipment and personnel resources through a progressive exercise program.
12. Providing adequate professional and support staff to monitor, implement, and evaluate homeland security programs at a state and local level.
13. Furthering the integration of North Dakota's homeland security strategy.
14. Hardening critical infrastructure sites at a state and local level.
15. Improving the collection, analysis, and dissemination of homeland security intelligence.

During federal fiscal year 2003, the federal government distributed over $18 million in federal funds to North Dakota for homeland security purposes. Of that amount, approximately $13 million was designated for use for first responder preparedness and mitigation. Each county received an allocation that was generally used for emergency planning and for purchasing equipment such as personal protection, decontamination, and communications equipment. State Radio also received over $1 million to begin the migration from analog to digital radio.

During federal fiscal year 2004, the state received over $19 million in federal homeland security funds. Nearly $15 million of that amount was designated for homeland security uses, over $4 million was designated for law enforcement, and about $300,000 was allocated for the Citizen Corps. Of the amount designated for homeland security, 80 percent was required to be distributed to local governments. The state's share of the funds was used to upgrade the state public safety communications infrastructure and the criminal justice information sharing system, to enhance geographic information system mapping, and to support planning and the administration of the Division of Emergency Management and the State Operations Center.

The local share of homeland security funds was distributed to each county based upon the population of the county and the assessment of the county's security needs. Each county was required to develop a homeland security spending plan that had a nexus with the state plan and that allocated the homeland security funds to entities within the county based upon the county plan.

The committee received testimony from representatives of various political subdivisions and other first responders regarding the use of homeland security funds at the local level. The testimony indicated that a great deal of the local funding was dedicated to purchases of personal protection equipment and decontamination equipment and radio communications equipment to provide interoperability among fire, police, and other first responders.

Representatives of entities such as hospitals, ambulance services, and other emergency medical services in some areas of the state testified that they were not provided the opportunity to participate in the decisions regarding allocations of the homeland security funding and that those entities did not receive funding necessary to ensure that those entities will be prepared to respond to a large-scale emergency or disaster. Representatives of hospitals also expressed concern that federal funding allocated to the State Department of Health has remained centralized and has not been allocated to the local level to address emergency preparedness of hospitals.

The committee received testimony indicating that future disbursements of homeland security funding to the state might be reduced because the federal government may change the method through which state allocations are determined. Although the new formula would distribute more funds to more populated areas, the fiscal year 2005 distribution to North Dakota is estimated to be approximately $16 million.

Although the state and local governments have received significant amounts of federal funds for homeland security efforts, testimony indicated that additional funds are necessary to raise the level of emergency response preparedness in the state. Concerns were expressed with respect to the ongoing costs of emergency response training and maintenance and replacement of equipment purchased with grant funds.

The committee also received testimony from public health officials regarding the need to address the threat of bioterrorism. Because public health units have not traditionally been faced with issues relating to bioterrorism, public health officials have had to expand the focus of the public health units and seek expertise in areas involving bioterrorism. Because of the added cost of addressing bioterrorism, many public health units, particularly the smaller health units, have had to reduce other services that have traditionally been provided by the health units.

The threat of bioterrorism has also impacted hospitals and other first responders. Those entities have

incurred significant costs in planning, training employees, and purchasing equipment. Because of declining population in most rural areas of the state, there is concern regarding the possibility of ambulance services and other emergency medical services being eliminated due to the cost of those services. Hospitals also have had to consider additional security measures such as lock-down capability and issues such as separation of air-handling service areas.

In September 2003 the Governor announced that State Radio would be consolidated with the Division of Emergency Management. The committee received testimony indicating that although there was some concern expressed regarding the method through which the consolidation was announced, the transition was accomplished smoothly.

The committee received reports regarding the implementation of computer-based public notification systems, often commonly referred to as "reverse 911" systems. Although the costs of implementing the notification systems appeared to be moderate, concerns were expressed regarding the ongoing costs of maintaining current data bases. In addition, there were questions regarding the limitations of the systems.

Conclusion

The committee makes no recommendation with respect to the study of the state's emergency management system, the impact of federal emergency reorganization on the state's emergency operations plan, and the emergency management preparedness of state agencies and local governments.

PUBLIC HEALTH UNIT STUDY

Background

During the 1997-98 interim, the Legislative Council's Insurance and Health Care Committee studied the development of a strategic planning process for the future of public health in the state. Because laws regarding public health were spread through various chapters in the North Dakota Century Code and were regarded as being antiquated, the committee recommended, and the Legislative Assembly enacted, Senate Bill No. 2045 (1999), which consolidated the public health law into a new chapter, unified powers and duties of local public health units, and required statewide participation in public health units.

North Dakota Century Code Chapter 23-35 contains the consolidated and updated public health law. The 1999 legislation required that all land in the state must be in a public health unit by January 1, 2001. As a result of that requirement, 28 public health units have been established. The public health units take a variety of forms, including multicounty health districts, single county health units, city and county health departments, city and county health districts, and single county health departments.

A local health officer is required to be a licensed physician. Among the powers and duties of a local health officer are to take any action necessary for the protection of public health and safety and determine when quarantine is necessary for the safety of the public.

North Dakota Century Code Chapter 23-07.6 sets forth procedures for confinement of individuals who may be infected with a communicable disease. The State Health Officer or any local health officer may order an individual into confinement if there are reasonable grounds to believe that the individual is infected with a communicable disease and is unwilling to behave in a manner as not to expose other individuals to danger of infection, the State Health Officer or local health officer determines that the individual poses a substantial threat to the public health, and confinement is necessary and is the least restrictive alternative to protect or preserve the public health. An individual confined may contest the confinement through a court hearing.

Testimony and Committee Considerations

The committee received testimony regarding the structure, funding, and core functions of the various public health units. Although all areas of the state are required to be included within a public health unit, state law does not mandate any minimum requirements or establish any expectations of services for public health units. A county may allocate funding not exceeding the amount raised by levying up to five mills to support public health units. In addition to the local tax funding, public health units are funded through state and federal grants and fees collected for services. Because funding levels and service areas vary for the 28 public health units, the services provided vary greatly. The largest health unit employs over 100 employees, while the smallest unit has one employee.

The American Public Health Association has specified core functions and essential services of public health entities to serve as a guide for public health decisionmaking and operations. The three core functions identified by that association are assessment, policy development, and assurance. With respect to services provided by public health entities, 10 services have been identified as essential. The State Department of Health has coordinated efforts to complete the national public health performance standards assessment and strategic planning processes to identify strengths and weaknesses of public health units. A statewide summary of the assessment indicated that the essential services of diagnosing and investigating health problems are being performed well by public health units. In addition, the assessment indicated that public health units have performed well with respect to the planning function. However, the assessment indicated that public health units scored low in the area of readiness to respond to emergencies or disasters.

The committee heard testimony indicating that many public health units are unable to meet the goals of providing all 10 of the essential public health services under the current public health infrastructure. Nonetheless, there was testimony suggesting that state-defined minimum standards or core responsibilities would be beneficial in providing direction for public health unit

infrastructure development. However, concern was expressed that additional state funding would be necessary if state-mandated minimum standards were imposed.

The committee received testimony indicating that the role of public health units has changed significantly in the last few years. Planning to address bioterrorism threats and reacting to the emergence of new diseases have placed additional burdens on public health units. However, representatives of several public health units indicated that public health units generally have not received federal homeland security grant funds to assist in addressing the additional responsibilities that the public health units have assumed.

To assist public health units in carrying out some of the additional responsibilities, the State Department of Health has identified a lead public health unit in each of the eight regions of the state. Utilizing federal grant funds, each of the lead public health units employs a public health emergency response coordinator, a public information officer, and an environmental health practitioner to provide services to the public health units in the region. In addition, the State Department of Health provides an epidemiologist for each region.

The committee received testimony questioning the need for the requirement that a local public health officer be a physician. Because some rural public health units may not have any physicians with experience in public health or any physicians willing to serve as public health officers, the committee was requested to consider a bill draft that would have allowed an individual who has experience in public health and who holds a bachelor's degree in an allied health profession to serve as a local health officer. Opponents of the bill draft expressed concern that the significant responsibilities of the local health officer, including the ability to quarantine individuals, require the individual to hold the qualifications of a physician. Other testimony indicated that most public health units have not had problems finding a physician willing to serve as the local health officer.

The committee received testimony indicating that some public health units experience difficulty in obtaining legal counsel. Although the State Department of Health may seek legal counsel from the Attorney General and is able to serve as a conduit between the Attorney General and public health units, representatives of public health units expressed a desire to be able to directly request legal counsel and legal opinions from the Attorney General. The committee considered a bill draft that authorized the Attorney General to provide legal counsel to local boards of health. Proponents of the bill draft contended that because it is difficult to obtain legal counsel with expertise in public health law and because of the limited resources of public health units, direct access to counsel from the Attorney General is vital to public health units. Despite concerns regarding the potential burden on the Attorney General's office, proponents of the bill draft suggested that boards of public health would be judicious in requesting assistance from the Attorney General.

Recommendation

The committee recommends House Bill No. 1034 to authorize the Attorney General to provide legal counsel and legal opinions to local boards of health.

STATE RADIO REPORT

The committee received reports from representatives of State Radio regarding the operation of State Radio and the emergency 911 telephone system standards and guidelines. Twenty-four public safety answering points serve the state by providing emergency services communications. Only one county--Rolette County--has not deployed an emergency 911 system. Because each county has used its own criteria in establishing base geographic information system maps for the county and some counties have not done any mapping, State Radio began an effort to develop base guidelines for counties to follow. Representatives of State Radio made no recommendations for proposed legislative changes.

PUBLIC SAFETY ANSWERING POINT REPORT

The committee received a report regarding city and county fees on telephone exchange access service and wireless service. Enhanced 911 services are funded through fees collected at the local level. Of the approximately 13,000 911 calls per month in the state, about 40 percent are from wireless telephones. The 57th Legislative Assembly (2001) authorized the extension of local 911 fees to wireless telephones. Extension of 911 service to wireless telephones is being done through a two-phased process. The first phase provides a callback number and the cellular site information. During the second phase, latitude and longitude information will be provided. The second phase of the project is estimated to be completed in 2005. The estimated five-year cost for the implementation of wireless 911 services is about $6 million, not including upfront costs of approximately $800,000.

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; 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 service 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 responsibility to receive periodic reports from the Central Personnel Division (Human Resource Management Services) on the implementation, progress, and bonuses provided by state agency programs to provide bonuses to recruit or retain employees in hard-to-fill positions. The Legislative Council also assigned to the committee a study directed by Section 41 of Senate Bill No. 2015 of public employee health insurance benefits, including options for providing health insurance for state employees, availability of other health insurance plans, single versus family coverage, employee contributions, and unitization of premium rates for budgeting purposes.

Committee members were Senators Karen K. Krebsbach, (Chairman), Richard Brown, Ralph L. Kilzer, and Carolyn Nelson and Representatives Bill Amerman, Al Carlson, Mike Grosz, Jim Kasper, and Francis J. Wald. Representative Wayne W. Tieman was a member of the committee until his resignation on January 1, 2004.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2004. The Council accepted the report for submission to the 59th Legislative Assembly.

CONSIDERATION OF RETIREMENT AND HEALTH PLAN PROPOSALS

The committee established April 1, 2004, 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 Gallagher Benefit Services, Inc., 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 59th Legislative Assembly.

Teachers' Fund for Retirement (TFFR)

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 the 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 members. 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 that is in excess of the sum of payments already received 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. A 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 240 payments, the payments will be continued to a beneficiary for the balance of the 20-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. The option to receive a life annuity payable to the member with a guarantee that, should the member die prior to receiving 60 payments, the benefits will be continued to a beneficiary for the balance of the five-year period is not available to employees who retire on or after August 1, 2003. Retirees who elected this option before August 1, 2003, are not affected. In addition, members may elect a partial lump sum option at retirement. Under this option, a member receives an immediate lump sum equal to 12 times the monthly life annuity benefit and a reduced annuity. The reduction is determined actuarially. The member can then elect to receive the annuity benefit in one of the other optional forms, except that members who receive a partial lump sum option may not elect the level income option. The partial lump sum option is not available to disabled retirees or retirees who are not eligible for an unreduced retirement benefit. Actuarial equivalencies are based on tables adopted by the board of trustees.

From time to time the Teachers' Fund for Retirement statutes have been amended to grant certain postretirement benefit increases. 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 were 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, 1993. 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 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 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 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. The benefit multiplier was also increased from 1.88 percent to 2.00 percent.

In 2003 the partial lump sum option was adopted, equal to 12 times the monthly life annuity benefit. However, this option is not available if the level income option is elected and is not available for the reduced retirement or disability retirement. The 5-year certain and life option was replaced with the 20-year certain and life option. However, this provision did not impact retirees who retired under the 5-year certain and life option. Employer service purchase was authorized. Active members of the Department of Public Instruction were permitted to make a one-time irrevocable election to transfer to the Public Employees Retirement System in fiscal year 2004. Both assets and liabilities for all Teachers' Fund for Retirement system service was transferred for electing employees. Transferred assets were based on the actuarial present value of the member's accrued Teachers' Fund for Retirement benefit, or the member's contribution account balance if larger.

The latest available report of the consulting actuary was dated July 1, 2004. 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. Valuations are prepared annually, as of July 1 of each year, the first day of the Teachers' Fund for Retirement's plan and fiscal year. Concerning the financing objectives of the Teachers' Fund for Retirement Board of Trustees, the consulting actuary reported that the member and employer contribution rates are intended to be sufficient to pay the fund's normal cost and to amortize the fund's unfunded actuarial accrued liability in level payments over a period of 20 years from the valuation date. The funding period is set by the board of trustees and is considered reasonable by the actuary.

As of July 1, 2004, the employer contribution rate required in order to meet these goals was 11.34 percent. This is greater than the 7.75 percent rate currently required by law. The margin between the rate mandated by law and the rate necessary to fund the unfunded actuarial accrued liability in 20 years is -3.59 percentage points. This negative margin increased from -1.19 percentage points on July 1, 2003, mainly because of the recognition of investment experience losses from prior years. This increase would have been even larger if not for the 18.9 percent market return in fiscal year 2004. 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 never achieve complete amortization, i.e., the Teachers' Fund for Retirement has an infinite funding period. The funded ratio, the ratio of the actuarial value of assets to the actuarial accrued liability, decreased from July 1, 2003. The funded ratio on July 1, 2003, was 85.1 percent while it was 80.3 percent as of July 1, 2004. This decrease is also due to the recognized investment experience losses from prior years.

However, the consulting actuary reported that this picture of the Teachers' Fund for Retirement may be slightly optimistic. All of the standard actuarial measurements, including the funded ratio and the margin, are functions of the actuarial value of assets, which recognize 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 2003 and 80 percent of the investment gains in fiscal year 2004 are not yet reflected in the actuarial measurements. As these gains and losses are recognized over the next four valuations, the consulting actuary expects the negative margin to increase 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 76.4 percent, rather than 80.3 percent, if the market value of assets had been used rather than the actuarial value of assets. As of July 1, 2003, the funded ratio based on market value of assets was 69.5 percent.

Under Governmental Accounting Standards Board Statement No. 25, the plan must determine an annual required contribution. This must be sufficient to cover the normal cost and to amortize the unfunded actuarial accrued liability over a period not longer than 30 years. A 40-year period can be used through the July 1, 2005, actuarial valuation. The amortization may be determined as a level dollar amount or as a series of contributions that increase with assumed payroll increases. The board of trustees previously decided to designate the 20-year benchmark contribution rate, or the 7.75 percent statutory rate, if greater, as the annual required contribution for the Teachers' Fund for Retirement. As of July 1, 2003, the 7.75 percent rate was less than the 20-year benchmark rate. This is also true as of July 1, 2004, so the Teachers' Fund for Retirement will be required to report in its Comprehensive Annual Financial Report for the current fiscal year ending June 30, 2004, that actual contributions received were less than the annual required contribution. There are no other accounting consequences for the state or the school districts that sponsor Teachers' Fund for Retirement, since it is a "cost-sharing, multiple-employer" retirement system. The 2004 Comprehensive Annual Financial Report includes information showing that in fiscal year 2005, the contributions received will be 68 percent of the actuarial required contribution, 7.75 percent ÷ 11.34 percent.

The actuarial valuation reflects the benefit and contribution provisions set forth in state law. There were no changes made to these provisions since the previous actuarial valuation, although 22 employees of the

Department of Public Instruction transferred from the Teachers' Fund for Retirement to the Public Employees Retirement System. Actuarial assumptions and methods are set by the board of trustees, based upon recommendations made by the plan's actuary. These assumptions were last changed in 2000 following an analysis of the plan experience for 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 results of the actuarial valuation are dependent on the actuarial assumptions used. Actual results can and almost certainly will differ, as actual experience deviates from the assumptions. Even seemingly minor changes in the assumptions can materially change the liabilities, calculated contribution rates, and funding. The actuarial calculations are intended to provide information for rational decisionmaking.

The fund had 16,720 members on July 1, 2004. Of this total, 9,826 were active members, 5,373 were retirees and beneficiaries, 1,346 were inactive vested members, and 175 were inactive nonvested members. The total payroll was $376.5 million. The average salary was $38,321, the average age was 44.9 years, and the average service was 14.7 years.

The assets at market value were $1,374.7 million with an actuarial value of $1,445.6 million. The return on the market value of assets was 18.9 percent for the year ending June 30, 2004. This compares to 2.1 percent for the fiscal year ending June 30, 2003. The return on the actuarial value of assets was 1.9 percent for the year ending June 30, 2004. This compares to .6 percent for the fiscal year ending June 30, 2003. The ratio, actuarial value to market value, was 105.2 percent and the external cashflow was -1.5 percent. The consulting actuary reported that the normal cost percentage is 10.29 percent, the unfunded actuarial accrued liability increased from $251.9 million to $354.8 million and the funded ratio, actuarial assets divided by actuarial accrued liability, decreased from 85.1 to 80.3 percent. The funding period increased from 43.6 years to infinity. The benchmark contribution requirement based on the 20-year funding rate is 11.34 percent and thus the available margin is -3.59 percent. The total losses were $107.5 million, of which $87.8 million was due to asset experience and $19.7 million was due to liability experience.

The following is a summary of the proposals affecting the State Investment Board and the Teachers' Fund for Retirement over which the committee took jurisdiction and the committee's action on the proposals:

Bill No. 50

Sponsor: Board of Trustees

Proposal: Revises the definition of salary for purposes of TFFR to incorporate changes in the federal Internal Revenue Code made through August 1, 2005; revises minimum distribution requirements for purposes of TFFR to incorporate changes in the federal Internal Revenue Code made through August 1, 2005; revises benefit limitations for purposes of TFFR to incorporate changes in the federal Internal Revenue Code made through August 1, 2005; provides that retired members who return to teaching are required to pay the required contributions on all salary unless the employer has elected to pick up all or a portion of its employees' contributions, in which case the employer and employee are required to pay the employee contribution based on the pickup methodology used by the employer; provides that a retired member who returns to teaching under the annual hour limit is not entitled to earn any additional service credit during the period of reemployment and is not entitled to receive a refund of any additional contributions paid and that retirement benefits may not be adjusted to reflect changes in the retired member's age or final average salary at the end of the period of reemployment; provides that the form of payment elected by the retired member remains effective during and after the period of reemployment and that additional benefits normally available to active members, such as disability benefits, are not available to reemployed retired members; provides that members who return to active service in a critical shortage area or discipline are required to pay the required contributions on all salary received by the retired member unless the employer has elected to pick up all or a portion of its employees' contributions, in which case the employer and employee are required to pay the employee contribution based on the pickup methodology used by the employer and that the employer must pay the required employer contributions in a like manner; provides that a retired member who returns to active service in a critical shortage area or discipline is not entitled to receive a refund of any additional contributions paid; revises the withdrawal provisions applicable to TFFR to incorporate changes in the federal Internal Revenue Code made through August 1, 2005; provides that the TFFR Board administer the plan in compliance with the federal Internal Revenue Code and regulations adopted pursuant to the code as they apply to governmental plans.

The committee amended the bill at the request of the board of trustees to remove the provisions requiring employer and employee contributions when retirees return to covered employment.

Actuarial Analysis: The consulting actuary reported that there is no measurable actuarial cost to the bill.

Committee Report: Favorable recommendation.

Bill No. 51

Sponsor: State Investment Board

Proposal: Requires the executive director of the Retirement and Investment Office to conduct an employee criminal history record investigation for any individual first employed by the Retirement and Investment Office after July 31, 2005, who has unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director.

Actuarial Analysis: The State Investment Board reported that the proposal would have no actuarial impact to any of the funds invested by the State Investment Board nor would it cause any significant cost to be incurred by the Retirement and Investment Office.

Committee Report: No recommendation as this proposal was withdrawn at the request of the sponsor.

Bill No. 165

Sponsor: Representative Bette B. Grande

Proposal: Allows teachers who teach a summer school course or program on a short-term contract basis to elect not to participate in TFFR.

Actuarial Analysis: The consulting actuary reported the actuarial cost of the provisions to be negligible.

Committee Report: No recommendation.

Public Employees Retirement System (PERS)

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, law enforcement with prior main service, law enforcement without prior main service, and an optional defined contribution retirement plan; Highway Patrolmen's retirement system; Job Service North Dakota retirement plan; 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. Members of the law enforcement retirement system are eligible for a normal service retirement at age 55 and three consecutive years of service or when age plus service is equal to at least 85--the Rule of 85. 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 each of the next 10 years of service, and 1.25 percent for service in excess of 20 years. The retirement benefit for members of the National Guard and law enforcement retirement systems 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 members of the National Guard and law enforcement retirement systems are eligible for 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 the earlier of age 65 or the age at which the Rule of 85 is met. The early service retirement benefit for a member of the judges' retirement system 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. The early service retirement benefit for a member of the law enforcement retirement system is the normal service retirement benefit; however, a benefit that begins before age 55, or Rule of 85, if earlier, is reduced by one-half of 1 percent for each month before age 55.

A member of the main system, National Guard, or law enforcement 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, National Guard, or law enforcement 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 deferred vested retirement benefit for a member of the law enforcement retirement system is the normal service retirement benefit payable at age 55 or the Rule of 85, if earlier. Reduced early retirement benefits may be elected upon attainment of age 50.

The surviving spouse of a deceased member of the main system, the National Guard, or law enforcement retirement system who had accumulated at least three years of service before normal retirement is entitled to elect one of four forms of preretirement death benefits. The preretirement death benefit may be a lump sum payment of the member's accumulated contribution with interest; the member's accrued benefit payable for 60 months to the surviving spouse; 50 percent of the member's accrued benefit, not reduced on account of age, payable for the surviving spouse's lifetime; or continuation portion of a 100 percent joint and survivor annuity, only available if the participant was eligible for normal retirement. 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 the member's accumulated contribution or 100 percent of the member's accrued benefit, not reduced on account of age, payable for the spouse's lifetime.

In lieu of a monthly retirement benefit, terminating nonvested members and terminated vested members 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 at .5 percent less than the actuarial interest rate assumption. The standard form of payment is a monthly benefit for life with a refund to the beneficiary at death 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 "pop-up" feature; 5-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' retirement 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 the members of the main system, National Guard, and law enforcement retirement systems, a member of the judges' retirement 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 consecutive months employed during the last 120 months of employment.

Except for the employer contribution rate for the National Guard and the law enforcement retirement systems, 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. The contribution rate for a member of the law enforcement retirement system with prior main service is 4 percent, and the employer contribution is 8.31 percent. The contribution rate for a member of the law enforcement retirement system without prior main service is 4 percent, and the employer contribution is 6.43 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 1 through 12 of 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 to 4.12 percent, under the judges' retirement system from 15.52 to 14.52 percent, and under the Highway Patrolmen's retirement system from 17.07 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 the money was redirected to the retiree health insurance credit fund.

The latest available report of the consulting actuary is dated July 1, 2004. According to that report, the combined net assets of the Public Employees Retirement System and Highway Patrolmen's retirement system were $1,309,271,534 at market value. This compares to $1,129,905,422 on July 1, 2003. The combined actuarial value of these funds was

$1,236,490,403. Of the combined valuation assets, $1,172,258,036 is allocated to the Public Employees Retirement System main system; $20,765,171 to the judges' retirement system; $1,383,824 to the National Guard retirement system; $2,114,663 to the law enforcement retirement system, with prior main service; $11,388 to the law enforcement retirement system, without prior main service; and $39,957,321 to the Highway Patrolmen's retirement fund. The return on the market value of assets for 2003-04 for the Public Employees Retirement System fund was 16.64 percent, compared to 5.20 percent for the preceding year. The return on the actuarial value of the assets for 2003-04 for the Public Employees Retirement System fund was 3.16 percent, compared to the investment return assumption of 8 percent. As a result, the fund experienced an investment loss on an actuarial value basis of approximately $55 million. The ratio of the actuarial assets to the market value of assets for the fund is 94.4 percent. On July 1, 2003, this ratio was 106.7 percent.

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 income funds to determine the combined actuarial value of the systems. The amount of actuarial value of the 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 and 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 funds are summarized in the following table:

Plan Year Ending June 30	Market Value	Actuarial Value
1995	14.24%	8.98%
1996	15.78%	11.65%
1997	19.90%	13.14%
1998	15.65%	14.02%
1999	10.88%	14.73%
2000	9.43%	13.71%
2001	(4.47)%	9.36%
2002	(6.94)%	3.91%
2003	5.19%	2.18%
2004	16.65%	3.16%

The fund had 17,636 active members on July 1, 2004. Of this total, 17,522 were active members of the main system; 46 were active members of the judges' retirement system; 17 were active members of the National Guard retirement system; 39 were active members of the law enforcement retirement system, with prior main service; and 12 were active members of the law enforcement without prior main service system. The total payroll was $501,002,180 and the average salary was $28,408. There were 986 inactive members as of July 1, 2004, with vested rights to deferred retirement benefits. The average deferred monthly benefit for this group was $404. There were also 63 members on leave of absence from the main system. For these groups, the liability is carried for their deferred retirement benefits.

The consulting actuary reported that the present rate of contributions is not sufficient to meet the actuarially determined requirement for 2004-05, based upon the actuarial assumptions and financing objectives approved by the Retirement Board. The consulting actuary recommended that the Retirement Board continue to review these results and projected future performance to determine appropriate measures to mitigate the difference between the actuarial and statutory contribution rates. There were two new groups included in the Public Employees Retirement System during the 2003-04 year. They were law enforcement with prior main service and law enforcement without prior main service. The actuarial valuation reflected an asset transfer from the main system to the law enforcement with prior main service of $2,176,156 as of June 30, 2004. The transferred amount was equal to the main system actuarial accrued liability for the 40 participants who transferred from the main system to the law enforcement with prior main service system.

The contribution requirements consist 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 6.30 percent of payroll. The statutory contribution rate is 4.12 percent of payroll. Thus, the statutory contributions are less than the actuarial contribution requirement by 2.18 percent of payroll, and the margin available in the main system is -2.18 percent of payroll or 4.12% - 6.30%.

The report for the judges' retirement system indicated that an employer contribution of 12.44 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 2.08 percent of payroll. This results in an actuarial margin of 2.08 percent or 14.52% - 12.44%.

The report for the National Guard retirement system indicated that an employer contribution of 3.25 percent of payroll is required to fund the system. The contribution rate set by the Retirement Board is 8.33 percent of salary. Thus, statutory contributions exceed the actuarial contribution requirement by 5.08 percent of payroll. This results in an actuarial margin of 5.08 percent or 8.33% - 3.25%.

The report for the law enforcement with prior main service system indicated that an employer contribution of 7.88 percent of payroll is required to fund the system. The employer contribution rate is 8.31 percent of payroll.

Thus, contributions exceed the actuarial contribution requirement by .43 percent of payroll. This results in an actuarial margin of .43 percent or 8.31% - 7.88%. The report for the law enforcement without prior main service system indicated that an employer contribution of 8.35 percent of payroll is required to fund the system. The employer contribution rate is 6.43 percent of payroll. Thus, contributions are less than the actuarial contribution requirement by 1.92 percent of payroll and the margin available in this system is -1.92 percent payroll or 6.43% - 8.35% .

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 covered 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 the three forms--a lump sum payment of accumulated contributions with interest; 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 surviving 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 contributions with interest 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. The member's contribution is 10.30 percent of monthly salary. The state contributes 16.70 percent of monthly salary for each participating member. A member's contributions earn interest at an annual rate of 7.50 percent.

The latest available report of the consulting actuary for the Highway Patrolmen's retirement fund is dated July 1, 2004. According to that report, the Highway Patrolmen's retirement fund had net assets with an actuarial value of $39,957,321 and a market value of $42,309,251. Total active membership was 132, and an employer contribution of 19.03 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 -2.33 percent of payroll or 16.70% - 19.03%.

The latest available report of the consulting actuary for the retiree health insurance credit fund is dated July 1, 2004. According to that report, the fund had net assets with a market value of $30,163,400 and an actuarial value of $28,949,719. The rate of return on the market value basis was 15.19 percent for the year ending June 30, 2004. On an actuarial basis, the rate of return was 2.00 percent for that year. Total active membership was 18,017 (7,173 males and 10,844 females). The statutory contribution rate is 1.00 percent of payroll. An employer contribution of .99 percent of payroll is required to fund the plan. This results in an actuarial margin of .01 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 consulting actuary also reviewed the retirement plan for employees of Job Service North Dakota. The Public Employees Retirement System Retirement Board assumed administration of this plan from Job Service North Dakota pursuant to legislation enacted in 2003. This is a closed retirement plan for employees of Job Service North Dakota. As of July 1, 2004, the plan had 60 fully vested active employees with total annual salaries of $2,459,508. There were five inactive employees as of July 1, 2004, with vested rights. There were 100 pensioners and beneficiaries as of July 1, 2004, and 113 pensioners and beneficiaries receiving annuities from the Travelers Plan as of July 1, 2004. Thus, total plan participants as of July 1, 2004, was 278. The scheduled contribution at the end of the year ending June 30, 2004, was zero and thus the normal cost was zero. Effective July 1, 1999, the scheduled contribution will be zero as long as the plan's actuarial value of assets exceeds the actuarial present value of projected benefits. If, in the future, the liabilities of the plan exceed its assets, a "scheduled contribution" will be determined based on the funding policy adopted by the employer. The July 1, 2004, actuarial valuation reported the actuarial value of assets at $67,505,163 and the actuarial present value of projected benefits at $61,845,450. The total market value of assets was $73,302,185.

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:

Bill No. 52

Sponsor: Retirement Board

Proposal: Revises the purchase of service credit provisions applicable to the Highway Patrolmen's retirement system for qualified military service; provides that permanent and total disability for purposes of the Highway Patrolmen's retirement system is based solely on a contributor's inability to perform the contributor's duties arising out of physical or mental impairment; for the Highway Patrolmen's retirement system provides that the joint and survivor 100 percent retirement payment option is the actuarial equivalent joint and survivor 100 percent option, the life with 10-year certain retirement benefit payment option is the actuarial equivalent life with 10-year certain option, adds an actuarially equivalent life with 20-year certain option, and eliminates the life with 5-year certain option; provides an actuarially equivalent partial lump sum distribution option with a 12-month maximum lump sum distribution for the Highway Patrolmen's retirement system; provides that the Retirement Board administer the Highway Patrolmen's retirement system plan in compliance with provisions of the federal Internal Revenue Code in effect through August 1, 2005; provides that information relating to beneficiaries under the Highway Patrolmen's retirement system may be disclosed to other beneficiaries of the same member; provides that information and records under the Highway Patrolmen's retirement system may be disclosed to the general public, but only after the board has been unable to locate the member for a period in excess of two years, and limited to the member's name and the fact that the board has been unable to locate the member; changes the definition of peace officer for purposes of PERS to require persons employed after August 1, 2005, be employed 32 hours or more per week and at least 20 weeks each year of employment; provides that participating members of the law enforcement retirement plan who begin employment after August 1, 2005, are ineligible to participate concurrently in any other retirement plan administered by PERS; requires the executive director to conduct an employee criminal history record investigation for any individual first employed by PERS after July 1, 2005, who has unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director; provides that the life with 10-year certain option is the actuarially equivalent life with 10-year certain option, adds an actuarially equivalent life with 20-year certain option, and eliminates the life with 5-year certain option distribution option; provides an actuarially equivalent joint and survivor level Social Security option, with 50 or 100 percent options, which is available only to members who retire before attaining the age at which they may begin to receive unreduced Social Security benefits; adds an actuarially equivalent partial lump sum distribution option with a 12-month maximum lump sum distribution; revises the purchase of service credit provisions applicable to PERS for qualified military service; provides that the Retirement Board administer the plan in compliance with the federal Internal Revenue Code in effect through August 1, 2005; revises the definition of eligible employee for purposes of the defined contribution plan to provide that if a participating member loses permanent employee status and becomes a temporary employee, the member may still participate in the defined contribution retirement plan; revises the military service provisions applicable to the defined contribution retirement plan; provides that a surviving spouse beneficiary may elect one or a combination of several of the methods of distribution currently provided for the defined contribution retirement plan but that a beneficiary who is not the surviving spouse may only choose a lump sum distribution of the accumulated balance; and repeals provisions relating to prior service credit under the Public Employees Retirement System

The committee amended the bill at the request of the PERS Board to remove the actuarially equivalent life with 20-year certain option.

The committee amended the bill at the request of the PERS Board to remove the expanded definition of disability under the Highway Patrolmen's retirement system and delete the employee background check provisions.

Actuarial Analysis: The consulting actuary reported that the proposal, as amended, will have no actuarial impact. The reported actuarial cost impact of the proposal, as submitted, on the Highway Patrolmen's retirement system is summarized in the following table:

	Valuation Results	Retirement Bill No. 52.02*
Actuarial accrued liability	$44,468,717	$44,524,994
Normal cost	$1,251,027	$1,267,787
Required contribution	$1,026,385	$1,047,072
Required contribution increase	-	$20,687
As a percentage of payroll	-	.38%
Payroll	$5,393,150	$5,393,150

*Assumes an increase in the number of disability retirements.

This bill would have no or minimal impact on the Public Employees Retirement System and the retiree health benefits fund.

Committee Report: Favorable recommendation.

Bill No. 53

Sponsor: Retirement Board

Proposal: Defines final average salary for purposes of the Highway Patrolmen's retirement system and the PERS main system for contributors who retire on or after July 1, 2009, as the average of the highest salary received by the contributor for any 36 months employed during the last 180 months of employment; defines final average salary, for an employee employed on August 1, 2005, as the average of the highest salary received by the contributor for any 36 months employed during the last 120 months of employment multiplied by 1.03; provides that if the Retirement Board determines that the retirement fund has obtained a total return on investment of 11.2 percent or higher for the fiscal year ending

June 30, 2005, or June 30, 2006, and that the retirement fund has the necessary margin to pay for the benefit, the board is required to authorize a one-time payment to each retiree receiving benefit payments of 50 percent of the retiree's then current monthly benefit payment.

The committee amended the bill at the request of the sponsor to remove the provisions of the bill that have an actuarial cost.

Actuarial Analysis: The proposal, as amended, has no actuarial cost impact. The actuarial consultant reported that a total annualized additional return on the market value of assets of approximately .85 percent from the trust fund would offset the cost for the one-time postretirement payment. This payment is contingent on an 11.20 percent annualized return on investment.

Actuarial Cost Analysis: The bill's impact on the July 1, 2004 actuarial valuation results for the affected retirement systems is summarized in the following tables:

Highway Patrolmen's Retirement System

	Valuation Results	Three Percent Final Average Salary Increase
Actuarial accrued liability	$44,468,717	$45,092,327
Normal cost	$1,251,027	$1,287,436
Required contribution	$1,026,385	$1,106,315
Required contribution increase	-	$79,930
As a percentage of payroll	-	1.48%
Payroll	$5,393,150	$5,393,150

For the one-time postretirement payment equal to 50 percent of the member's current monthly benefit payment, the increase in the actuarial accrued liability would be $97,078. A total annualized additional return on the market value of assets of approximately .29 percent from the trust fund would offset the cost for the one-time postretirement payment. This payment is contingent on an 11.20 percent annualized return on investments.

Main, Judges, and National Guard - One-Time Postretirement Payment

For the one-time postretirement payment equal to 50 percent of the member's current monthly benefit payment, the increase in the actuarial accrued liability would be $2,063,273. A total annualized additional return on the market value of assets of approximately .85 percent from the trust fund would offset the cost for the one-time postretirement payment. This payment is contingent on an 11.20 percent annualized return on investments.

Public Employees Retirement System - Main System

	Valuation Results	Three Percent Final Average Salary Increase
Actuarial accrued liability	$1,250,849,240	$1,274,301,827
Normal cost	$44,743,189	$45,862,040
Required contribution	$31,157,298	$33,912,912
Required contribution increase	-	$2,755,614
As a percentage of payroll	-	.56%
Payroll	$494,519,798	$494,519,798

Public Employees Retirement System - Judges

	Valuation Results	Three Percent Final Average Salary Increase
Actuarial accrued liability	$18,420,517	$18,793,908
Normal cost	$935,392	$963,806
Required contribution	$548,288	$604,824
Required contribution increase	-	$55,536
As a percentage of payroll	-	1.26%
Payroll	$4,415,921	$4,415,921

Public Employees Retirement System - National Guard

	Valuation Results	Three Percent Final Average Salary Increase
Actuarial accrued liability	$1,150,323	$1,174,966
Normal cost	$56,058	$57,590
Required contribution	$18,502	$21,754
Required contribution increase	-	$3,252
As a percentage of payroll	-	0.57%
Payroll	$569,829	$569,829

Public Employees Retirement System - Law Enforcement With Prior Main Service

	Valuation Results	Three Percent Final Average Salary Increase
Actuarial accrued liability	$2,427,097	$2,498,956
Normal cost	$223,964	$117,100
Required contribution	$91,822	$99,973
Required contribution increase	-	$8,151
As a percentage of payroll	-	0.79%
Payroll	$1,165,355	$1,165,355

Public Employees Retirement System - Law Enforcement Without Prior Main Service

	Valuation Results	Three Percent Final Average Salary Increase
Actuarial accrued liability	$10,430	$10,671
Normal cost	$40,185	$41,336
Required contribution	$27,667	$28,835
Required contribution increase	-	$1,168
As a percentage of payroll	-	0.35%
Payroll	$331,277	$331,277

Committee Report: Favorable recommendation.

Bill No. 201

Sponsor: Senator David P. O'Connell

Proposal: Provides that an employee who is eligible for normal retirement who accepts a retirement benefit under the defined benefit plan and who subsequently becomes employed with a participating employer may elect to permanently waive future participation in the retirement plan and maintain that employee's retirement status.

Actuarial Analysis: Pending.

Committee Report: No recommendation because the committee received the proposal at its last

committee meeting and requested the Public Employees Retirement System Retirement Board to obtain a technical review and actuarial analysis of the proposal.

Uniform Group Insurance Program

Bill No. 11

Sponsor: Senator Tim Mathern

Proposal: Requires the Retirement Board to contract with one or more nondomestic pharmacy benefits managers to facilitate the purchase of eligible Canadian prescription drugs by eligible employees and persons receiving retiree health benefits.

Actuarial Analysis: The consulting actuary reported that Public Employees Retirement System members may obtain prescription drugs from Canada or other foreign suppliers although there is no explicit design incentive to do so. Subject to its technical comments, if the Public Employees Retirement System plan waived copayments or coinsurance to encourage its members to use Canadian suppliers the plan could likely experience drug cost-savings. The proposed legislation would allow the Retirement Board to provide financial incentives for plan participants to utilize Canadian pharmacies.

The consulting actuary reported that evaluating the true financial impact of this proposed bill cannot be done without extensive actuarial modeling. Even with modeling, predicting individual decisions regarding whether to purchase prescription drugs available in Canada from a domestic or nondomestic pharmacy benefits manager is very difficult. A number of variables, including benefit design, drug cost differentials between the United States and Canada, as well as an individual's personal beliefs about potentially violating federal law, would have to be quantified. Benefits literature appears to conclude that many, but not all, prescription drugs can be obtained less expensively in Canada. However, the overall prediction of savings to the Retirement Board and its plan participants would depend on accurate measurement of the variables mentioned above. The consulting actuary did note that Minnesota provides a similar incentive in its public employee health insurance plan.

The consulting actuary cautioned that it is not qualified to render legal advice. However, it reported that it is the understanding of its Corporate Compliance Department that drug reimportation is not legal under federal law. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 requires the Secretary of Health and Human Services to conduct a comprehensive study and prepare a report to Congress on whether and how importation could be accomplished in a manner that ensures safety. This report is not expected to be completed until later this year. Until such time as this report is presented and accepted by Congress, it is the position of the consulting actuary that drug importation is not allowed by federal law. Consequently, the consulting actuary recommended that the Legislative Assembly obtain a legal opinion on the proposed bill concerning this issue. The consulting actuary also noted that the Public Employees Retirement System is a fully insured plan with Blue Cross Blue Shield of North Dakota. Due to the above legal concerns, Blue Cross Blue Shield of North Dakota or other vendors may not be willing to incorporate this feature under their plan designs. Therefore, the consulting actuary reported that considerations should be given to adding wording that this provision is subject to the Public Employees Retirement System being able to negotiate this feature with its carrier. The other option would be for the state to "hold harmless" the carrier, which would require additional authorization to the proposed legislation.

Committee Report: Unfavorable recommendation.

Bill No. 22

Sponsor: Senator Tim Mathern

Proposal: Allows any person who is without health insurance coverage to participate in the uniform group insurance program subject to minimum requirements established by the Retirement Board.

Actuarial Analysis: The consulting actuary reported that with minimum requirements as established by the Retirement Board and a minimum participation period of 60 months for private sector employer groups, the proposed bill would not have a significant impact upon the Public Employees Retirement System plan as long as the Retirement Board can use appropriate underwriting rules and premium adjustments to make sure that the introduction of these additional members would not increase the overall risk profile of the existing plan. The bill as written states that employers, employees, and uninsured individuals may participate in the uniform group insurance program "subject to minimum requirements established by the board." There is a question whether the Health Insurance Portability and Accountability Act allows the Public Employees Retirement System to underwrite new applicants to its plans in a manner to eliminate adverse selection. In particular, the Act's nondiscrimination rules severely restrict the use of medical underwriting and risk-adjusted premiums for health care coverage. The pertinent question identified by the consulting actuary is whether the Act prohibits the Retirement Board from using medical underwriting and risk-adjusted premiums when adding the new groups to the uniform group insurance program. The Public Employees Retirement System uniform group insurance program clearly meets the Act's definition of a "covered entity" as a health plan. Therefore, it is subject to the nondiscrimination requirements unless it qualifies for an exemption. A nonfederal governmental employer that provides self-funded group health plan coverage to its employees may elect to exempt its plan from the nondiscrimination requirements of the Act. However, applicability is very limited. It does not apply to either insured or self-funded plans of employers that are not governmental employers nor to insured plans of governmental employers. An election must be completed annually. However, the consulting actuary reported that it is likely that this exception may not apply if the Public Employees Retirement System allows private sector plans into its program as permitted by the proposed bill. As noted, the exception only applies to "governmental employers." As

long as the Public Employees Retirement System continues to insure its health plans, it is the position of the consulting actuary that the plan must comply with the Act's nondiscrimination requirements. Consequently, the Retirement Board would not be able to "apply medical underwriting and risk-adjusted premiums" as stated in the proposed bill. Alternatively, if the board decides to self-fund and allow nongovernmental employees into the plan as allowed by the proposed bill, the consulting actuary questioned whether the governmental exemption would then apply. To determine estimated fiscal impact of not being able to medically underwrite or risk-adjust, new applicants would require separate actuarial analysis. However, one indication of a potential additional cost to group health plans as the result of the Act's impact comes from the economic impact study done by the Department of Labor and the Department of Health and Human Services. These federal agencies estimated that the Act's nondiscrimination rules would add approximately "1 percent to total health plan expenditures."

Committee Report: Unfavorable recommendation.

Bill No. 43

Sponsor: Senator Rich Wardner

Proposal: Provides that for purposes of a provision allowing 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, retirement allowance means a payment or payments to a participant of an employer-sponsored pension or retirement plan who terminated employment by retirement on or after achieving normal retirement age and who was vested in the employer plan at the time of retirement.

Actuarial Analysis: The consulting actuary reported that its primary concerns with the bill is that it would expend the number of people eligible to a group that is not as healthy, it would create different coverage provisions for state and political subdivision employees, and it could result in the loss of coverage for some employees, e.g., disability and early retirees.

Under the bill as proposed, the consulting actuary reported that the number of early retirees who become eligible for the plan likely would increase. The bill could result in retirees joining the plan at much lower ages. Average health costs of the program could be adversely affected. Because early retiree premium rates are blended with the actives, any increase in costs due to an influx of early retirees could ultimately impact the costs paid by the state to fund the uniform group insurance program.

The Retirement Board's own claim experience points out the added costs of early retirees who do not qualify for the retiree health credit. Of the 619 non-Medicare retirees who were members of the plan in 2003, 305, or 49 percent, had no retiree health credits. The average cost in 2003 for this group was 17 percent greater than the 314, or 51 percent, of the members who had a retiree health credit due to meeting current age and longevity standards. Although not a sample size sufficient to draw any definite conclusions, the consulting actuary reported that it does support the general belief that retirees who are eligible for a credit are better risks than those who are not. To the extent this group grows and the costs increase due to adverse selection, the proposal would have an impact on the active employer rates since the premium for this group is set by statute. Any costs to this group beyond the premium become a cost to the active group.

Using the Retirement Board's own experience in enrollment and applying Blue Cross Blue Shield of North Dakota's proposed renewal rates gives some indication of the potential additional cost to the plan as the result of the proposed bill. An additional 50 early retirees who did not qualify for retiree credit would add almost $57,000 per year in costs to the plan. One hundred new early retirees would add almost $114,000 in new costs per year. Ultimately, these additional costs would have to be absorbed by the active employee group.

In conclusion, the consulting actuary reported that it was concerned that the proposal would expand access to the uniform group insurance program to more pre-Medicare retirees which would be harmful to the overall financial health of the program. The consulting actuary reported that to protect the integrity of the program, it suggested that the Retirement Board continue to apply actuarially determined and consistent standards for retiree health insurance eligibility.

Committee Report: Unfavorable recommendation.

Bill No. 54

Sponsor: Retirement Board

Proposal: Allows the Retirement Board to receive money from third parties, including the federal government, pursuant to one or more federal programs and appropriates this money on a continuing basis for the board's use in paying benefits, premiums, or administrative expenses of the uniform group insurance program; allows the Retirement Board to negotiate the proposed bid price and specifications with any or all health insurance bidders; allows the Retirement Board to establish a plan of self-insurance for providing health insurance benefits coverage under a completely self-administered, self-insurance plan under the uniform group insurance program; provides that if the Retirement Board implements a self-administered, self-insurance program, the total amount of all premiums received for purposes of paying claims and administrative expenses is appropriated to the board on a continuing basis and that the board may employ whatever full-time equivalent staff is necessary to properly and efficiently implement and administer the program; allows the Retirement Board to develop a provider network by negotiating a contract with health care providers and associations.

Actuarial Analysis: The consulting actuary reported no adverse financial impact to the Public Employees Retirement System from any of the provisions in the bill.

To the extent that the bill would create a more competitive environment for the Public Employees Retirement System's health plan business, it could result in lower costs. If increased competition reduced costs by one-half of 1 percent, the resulting savings to the system would be almost $1.2 million per year. It would give the Retirement Board more flexibility in the areas of contract negotiations, accepting outside funds, evaluating self-administration, and establishing its own health provider network. If given the legislative freedom to pursue these concepts, the Retirement Board could evaluate each on its own merit as to potential short- and long-term cost-savings that it would provide.

Committee Report: Favorable recommendation.

Bill No. 55

Sponsor: Retirement Board

Proposal: Increases the employer contribution to the retiree health benefits fund from 1 percent of the monthly salaries and wages of all participating members to 1.45 percent and increases the retiree health benefits fund credit from $4.50 to $5.

Actuarial Analysis: The consulting actuary reported that the proposal would have a positive impact on the retiree health benefits fund of .30 percent. The bill's impact on the July 1, 2004, actuarial valuation results for the retiree health benefits fund is summarized in the following table:

	Valuation Results	Retirement Bill No. 55.02
Actuarial accrued liability	$74,589,006	$82,876,673
Normal cost (midyear)	$2,403,360	$2,670,400
Required contribution	$5,139,793	$5,891,940
Required contribution increase	-	$7,520,147
As a percentage of payroll	-	0.15%
Payroll	$518,516,285	$518,516,285
Statutory contribution rate	1%	1.45%
Contribution requirement rate	0.99%	1.14%
Margin	0.01%	0.31%

Committee Report: Unfavorable recommendation.

Old-Age and Survivor Insurance System (OASIS)

Bill No. 56

Sponsor: Retirement Board

Proposal: Increases primary insurance benefits under the Old-Age and Survivor Insurance System fund from $906.62 to $933.28 on August 1, 2005, and $959.94 on August 1, 2006; appropriates $23,000 from the general fund to PERS to pay Old-Age and Survivor Insurance System benefits to remaining beneficiaries.

The committee amended the bill at the request of the PERS Board to reduce the appropriation from $23,000 to $19,000.

Actuarial Analysis: The consulting actuary reported that the bill would have an actuarial impact on the Old-Age and Survivor Insurance System plan. Based on three plan participants, and reflecting the pay as you go funding policy, the annual cost for each of the next two years is simply the total of the expected benefit increases, or $959.76 (3 participants x $26.66 benefit increases x 12 months). The appropriation contained in the bill is sufficient to fund the benefit increase.

Committee Report: Favorable recommendation.

ADDITIONAL COMMITTEE RESPONSIBILITIES

The Public Employees Retirement System Board reported that no action by the committee was required under NDCC Section 54-52.1-08.2 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 committee was notified by the Public Employees Retirement System Board that the board had received a letter ruling from the Internal Revenue Service that the sections allowing a member to purchase service credit with pretax or aftertax money do not jeopardize the qualified status of the Highway Patrolmen's retirement system or the Public Employees Retirement System.

Pursuant to NDCC Section 54-06-31, the committee received periodic reports from the director of Human Resource Management Services on the implementation, progress, and bonuses provided by state agency programs to provide bonuses to recruit or retain employees in hard-to-fill positions. The director testified that under Section 54-06-31 state agencies may pay recruitment and retention bonuses only if the agency has a written policy in place identifying eligible positions or occupations and provisions for providing and receiving bonuses, the agency has filed a copy of the written policy with Human Resource Management Services, and the agency reports to Human Resource Management Services each bonus provided to an employee under the program. State agencies must fund bonus programs from within their salaries and wages budgets. Bonuses do not increase base salary and, therefore, do not require sustained funding. Recruitment bonuses include sign-on bonuses and referral bonuses. The director testified that recruitment bonuses are proving to be a successful tool in attracting qualified applicants in a very tight labor market, thus enhancing the state's recruitment efforts in hard-to-fill positions. The director testified that retention bonuses provide another tool for managers to retain highly skilled employees who are in high demand in the marketplace. The retention bonuses also help reduce turnover costs while conveying to employees recognition of their valuable skills and the work they perform for the state. The director reported that eight agencies have adopted policies for recruitment or retention bonus programs. These include the Bank of North Dakota, Department of Corrections and Rehabilitation, Highway Patrol, Department of Human Services, Information Technology Department, Department of Transportation, Job Service North Dakota, and the State

Water Commission. The director reported that while Job Service North Dakota and the State Water Commission have adopted policies, neither has provided any recruitment or retention bonuses. The director reported that six agencies have identified critical and hard-to-fill positions and awarded 223 bonuses to employees since the authorization legislation was enacted.

PUBLIC EMPLOYEE HEALTH INSURANCE BENEFITS STUDY

Uniform Group Insurance Program

Health insurance benefits are offered to public employees under the provisions of a uniform group insurance program established by the Legislative Assembly in 1971 and codified as NDCC Chapter 54-52.1. In 1963 the Legislative Assembly had enacted Chapter 52-12, which authorized any department, board, or agency of the state to act on its own behalf or in conjunction with other agencies to enter a group hospitalization and medical care plan and group life insurance plan for state employees. The agencies were required to pay five dollars per month for each participating employee's insurance premium and employees were required to pay the balance of the insurance premium. An employee could elect to participate in a single plan or family plan. The 1971 legislation establishing the uniform group insurance program repealed Chapter 52-12.

North Dakota Century Code Section 54-52.1-02 provides that the purpose of the uniform group insurance program is to promote the economy and efficiency of employment in the state's service, reduce personnel turnover, and offer an incentive to high-grade men and women to enter and remain in the service of state employment. This section provides that the uniform group must be composed of eligible and retired employees and be formed to provide hospital benefits coverage, medical benefits coverage, and life insurance benefits coverage. Eligible employees include permanent employees who are employed by a governmental unit, including members of the Legislative Assembly; judges of the Supreme Court; paid members of state or political subdivision boards, commissions, or associations; full-time employees of political subdivisions; elected state officers; and disabled permanent employees who are receiving compensation from the North Dakota Workforce Safety and Insurance fund. A permanent employee is one whose services are not limited in duration, who is filling an approved and regularly funded position in a governmental unit, and who is employed at least 17.5 hours per week and at least five months each year or for those first employed after August 1, 2003, is employed at least 20 hours per week and at least 20 weeks each year of employment.

North Dakota Century Code Section 54-52.1-04 requires the Public Employees Retirement Board to receive bids for the provision of hospital benefits coverage, medical benefits coverage, life insurance benefits coverage for a specified term, and employee assistance program services, and to accept the bid of and contract with the carrier that in the judgment of the board best serves the interests of the state and its eligible employees. This section allows the board to utilize the services of consultants on a contract basis in order that the bids received may be uniformly compared and properly evaluated. In determining which bid, if any, will best serve the interests of eligible employees and the state, the board is required to give adequate consideration to the economy to be effected; the ease of administration; the adequacy of the coverages; the financial position of the carrier, with special emphasis as to its solvency; and the reputation of the carrier and any other information that is available tending to show past experience with the carrier in matters of claim settlement, underwriting, and services. Each uniform group insurance contract entered into by the board is required by Section 54-52.1-05 to include as many optional coverages as deemed feasible and advantageous by the board, a detailed statement of benefits offered, including maximum limitations and exclusions, and other provisions the board deems necessary or desirable.

North Dakota Century Code Section 54-52.1-03 provides that a retiree who has accepted a periodic distribution from the defined contribution plan pursuant to Section 54-52.6-13 who the board determines is eligible for participation in the uniform group insurance program or has accepted a retirement allowance from the Public Employees Retirement System, the Highway Patrolmen's retirement system, the Teachers' Insurance and Annuity Association of America - College Retirement Equities Fund (TIAA-CREF) for service credit earned while employed by North Dakota institutions of higher education, the retirement system established by Job Service North Dakota under Section 52-11-01, the judges' retirement system established under Chapter 27-17, or the Teachers' Fund for Retirement may elect to participate in the uniform group without meeting minimum requirements at age 65, when the member's spouse reaches age 65, upon the receipt of a benefit, or when the spouse terminates employment. If a retiree or surviving spouse does not elect to participate at the times specified in this section, the retiree or surviving spouse must meet the minimum requirements established by the board. The retiree or surviving spouse must pay directly to the board the premiums in effect for the coverage then being provided. A retiree who has met the initial eligibility requirements of this section to begin participation in the uniform group insurance program remains eligible as long as the retiree maintains the retiree's participation in the program by paying the required premium pursuant to rules adopted by the board.

Except for employees receiving retirement benefits or who are eligible to participate under applicable federal law, an employee may not continue as a member of the uniform group upon termination of employment. However, a member or former member of the Legislative Assembly or that person's surviving spouse may elect to continue membership in the uniform group within the applicable time limitation after either termination of

eligible employment as a member of the Legislative Assembly or termination of other eligible employment or, for a surviving spouse, upon the death of the member or former member of the Legislative Assembly. The member or former member of the Legislative Assembly or that person's surviving spouse must pay the premiums in effect for the coverage provided directly to the Retirement Board.

North Dakota Century Code Section 54-52.1-06 requires each department, board, or agency to pay to the Retirement Board each month from its funds appropriated for payroll and salary amounts a state contribution in the amount as determined by the primary carrier of the group contract for the full single rate monthly premium for each of the eligible employees enrolled in the uniform group insurance program and the full rate monthly premium in an amount equal to that contributed under the alternate family contract, including major medical coverage, for hospital and medical benefits coverage for spouses and dependent children of its eligible employees enrolled in the uniform group insurance program. The board is then required to pay the necessary and proper premium amount for the uniform group insurance program to the proper carrier or carriers on a monthly basis. The combined health insurance premium for the 2003-05 biennium is $488.70 per month.

North Dakota Century Code Sections 54-52.1-03.1 and 54-52.1-03.4 govern participation by political subdivisions, employees of certain political subdivisions, and temporary employees in the uniform group insurance program. Section 54-52.1-03.1 provides that a political subdivision may extend the benefits of the uniform group insurance program to its permanent employees subject to minimum requirements established by the Retirement Board and a minimum period of participation of 60 months. If the political subdivision withdraws from participation in the uniform group insurance program before completing 60 months of participation, the political subdivision is required to make payment to the Retirement Board in an amount equal to any expenses incurred in the uniform group insurance program that exceed income received on behalf of the political subdivision employees as determined under rules adopted by the board. A retiree who has accepted a retirement allowance from a participating political subdivision's retirement plan may elect to participate in the uniform group insurance plan without meeting minimum requirements at age 65, when the employee's spouse reaches age 65, upon the receipt of a benefit, when the political subdivision joins the uniform group insurance plan if the retiree was a member of the former plan, or when the spouse terminates employment. If a retiree or surviving spouse does not elect to participate at the times specified, the retiree or surviving spouse must meet the minimum requirements established by the Retirement Board. Each retiree or surviving spouse is required to pay directly to the board the premiums in effect for the coverage then being provided. The board may require documentation that the retiree has accepted a retirement allowance from an eligible retirement plan other than the Public Employees Retirement System.

North Dakota Century Code Section 54-52.1-03.4 provides that an employee of a county, city, school district, district health unit, or park district that is not participating in the uniform group insurance program pursuant to Section 54-52.1-03.1 and who is not eligible for any other employee group health plan may elect to participate in the uniform group insurance program by completing the necessary enrollment forms and qualifying under the medical underwriting requirements established by the Retirement Board. The board may use risk-adjusted premiums for individual insurance contracts to implement the provisions of this section. The employee participating in the uniform group insurance program under this section is required to pay monthly to the Retirement Board the premium in effect for the coverage being provided.

Also, temporary employees may elect to participate in the uniform group insurance program by completing the necessary enrollment forms and qualifying under medical underwriting requirements of the program. Temporary employees utilizing this provision are required to pay monthly to the board the premiums in effect for the coverage being provided. This section prohibits political subdivisions, departments, boards, or agencies from making a contribution for coverage under this section.

North Dakota Century Code Section 54-52.1-04.3 requires the Retirement Board to establish under a self-insurance plan a contingency reserve fund to provide for adverse fluctuation in future charges, claims, costs, or expenses of the uniform group insurance program. Under this provision, the board is required to determine the amount necessary to provide a balance in the contingency reserve fund equal to three and one-half months of claims paid based on the average monthly claims paid during the 12 months immediately preceding March 1 of each year. The board is authorized to arrange for the services of an actuarial consultant to assist the board in making this determination. All money in the contingency reserve fund is appropriated for the payment of claims and other costs of the uniform group insurance program during periods of adverse claims or cost fluctuations.

Under NDCC Sections 54-52.1-04.7, 54-52.1-04.8, and 54-52.1-04.9, the Retirement Board is authorized to establish a dental plan, a vision plan, and a long-term care plan and is required to establish an employee assistance program available to persons in the medical and hospital benefits coverage group. Section 54-52.1-14 requires the Retirement Board to develop an employer-based wellness program. This program must encourage employers to adopt a board-developed wellness program by either charging extra health insurance premiums to nonparticipating employers or reducing premiums for participating employers.

All funds necessary to pay the consulting fees and health insurance benefits related to the uniform group insurance program are appropriated from insurance premiums received by the Retirement Board pursuant to NDCC Section 54-52.1-06.1.

Workplace Economics, Inc., reports that 16 states pay the full cost of health insurance coverage for an

individual employee--the employee pays nothing--and in several other states the employee has the option of selecting a plan that will be fully paid by the employer. It should be noted that this statement applies to premiums and not deductibles, coinsurance payments, or other out-of-pocket expenses that the employee may pay. Six states pay the full premium for family coverage. In most states the amount paid by the employee varies by the plan and coverage option selected. In Illinois, Kansas, New Mexico, and West Virginia the portion of the premium paid by the employee also varies by salary. In the remaining states, employees share premium costs with the state. All states provide or make available health insurance for pre-Medicare retirees, and 48 states provide or make available health insurance for Medicare-eligible employees (age 65 or older). Indiana and Nebraska do not provide retiree coverage in the state health plan for retirees beyond age 65, although retirees in Indiana may now purchase a Medicare complementary plan through the state. In a number of states, the retiree's share of health insurance premiums varies by characteristics such as date hired, date retired, or years of service at retirement.

History and Costs of the Uniform Group Insurance Program

Before 1983 the Retirement Board was required by law to solicit bids and contract for the provision of insurance benefits coverage with the insurance carrier determined by the board to be best able to provide that coverage. From 1971 to 1983 Blue Cross Blue Shield of North Dakota provided and administered the health insurance benefits plan for public employees. In 1983 the board was authorized by NDCC Section 54-52.1-04.2 to establish a plan of self-insurance for providing health benefits coverage under an administrative services-only contract or a third-party administrator contract if the board determined during any biennium that a self-insured plan is less costly than the lowest bid submitted by an insurance carrier. The board exercised the option to implement a self-insurance health benefits plan and administered the program in that manner from July 1, 1983, through June 30, 1989.

Rising health care costs in the state were the primary reason for the cashflow difficulties experienced in the health benefits plan. In the 1985-87 biennium the Legislative Assembly appropriated funds for a 20 percent premium increase, and claims costs increased 42 percent.

Although the board began its administration of the self-insured health benefits plan on July 1, 1983, with reserves of $2,143,880, claim expenditures and other expenses of the program exceeded premium income and other revenue in 1984 and by June 1987, the fund balance, as indicated in audited financial statements of the plan, was a negative $4,759,963 with estimated outstanding claims payable of $4,600,000.

In 1987 the board incorporated various cost-containment components into the health benefits plan which included:

1. Implementation of a program of concurrent review of inpatient hospitalizations designed to eliminate unnecessary treatment or prolonged hospital stays and to allow consideration of less expensive appropriate treatment for long-term medical care.
2. Implementation of a program of mandatory second surgical opinions for certain elective surgeries. (This program did not generate anticipated results, and after a one-year trial period was discontinued.)
3. Expansion of contract deductibles to include all inpatient, outpatient, and physician services.
4. Increase in the coinsurance base from the first $2,000 in charges to the first $4,000 in charges.
5. Implementation of a preferred pharmacy program.
6. Establishment of a separate premium rate for retirees, based on retiree claims experience.
7. Introduction of a $25 copayment for each hospital emergency room visit.
8. Adjustment of the Medicare coordination of benefits formula applied to retiree members of the plan.

Due to the introduction of these cost-containment initiatives and the availability to public employees of a number of attractive health maintenance organization plans, approximately 3,350 membership contracts constituting 23 percent of the total contracts of the health benefits plan were lost during the 1987 open enrollment period resulting in a decrease of approximately $563,000 per month in premium income.

The decision by the Medcenter One HMO, a health maintenance organization which had the largest Public Employees Retirement System-eligible enrollment, to discontinue its participation agreement with the Public Employees Retirement System as of July 1, 1988, and substantial increases in premiums charged by other HMOs, resulted in a substantial number of public employees choosing the Public Employees Retirement System health benefits plan during the 1988 open enrollment period. The influx of new membership and a 25 percent increase effective July 1, 1988, in premium rates charged retiree members of the plan increased monthly premium revenues by approximately $479,100, or 31 percent.

In January 1989 the Retirement Board voted to end the state-funded health insurance program and buy the coverage from Blue Cross Blue Shield of North Dakota. Officials of the Public Employees Retirement System predicted the state would end the 1987-89 biennium with a $3.5 million deficit and would need to increase premium rates by 65 percent in 1989-91. The Blue Cross Blue Shield of North Dakota bid of about $35 million to fund state employees' health insurance for the 1989-91 biennium included provisions that the company would absorb about $5 million in unpaid claims when it took over in July 1989.

Senate Bill No. 2026 (1989) appropriated $1.2 million from the fund for unemployment compensation claims to

the Public Employees Retirement System for the state group health program for the period beginning January 1, 1989, and ending June 30, 1991.

Retiree Health Insurance Program

In 1989 the Legislative Assembly established a retiree health benefits fund account with the Bank of North Dakota for the purpose of prefunding hospital benefits coverage and medical benefits coverage under the uniform group insurance program for retiree 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 are eligible to receive or were receiving retirement benefits. The retiree health benefits program is codified as NDCC Sections 54-52.1-03.2 and 54-52.1-03.3. In order to fund this system the employer contribution under the Public Employees Retirement System was reduced from 5.12 to 4.12 percent, and under the Highway Patrolmen's retirement system the employer contribution was reduced from 17.70 to 16.70 percent or 1 percent of the monthly salary or wages of participating members, including participating Supreme Court and district court judges, and the money was redirected to the retiree health benefits fund. The current allowable monthly credit toward hospital and medical benefits coverage is $4.50 multiplied by the member's or deceased member's number of years of credited service.

Testimony

The committee received information from a representative of Deloitte Touche Tohmatsu, the Public Employees Retirement System health care consultant until June 30, 2004, concerning perspectives on health insurance costs, trends, and plan designs in other states. The committee learned that managing rapidly rising health care costs is the number one human resource issue for virtually every employer. The committee learned there are several factors driving the increase in health care costs. These include increasing utilization, a backlash to managed care, an aging workforce, increasing cost of prescription drugs, increasing government regulation and legislation, increasing input costs, consolidation of providers which reduces leverage with health care providers, and increasing use of electronic tools and technology. The committee learned employers are focusing on several cost-management tactics. These revolve around plan design, administration and vendor management, employee contributions, and increased communication and education. Changes in plan design include adding or increasing copayments for selected services, varying copayments or employee contributions by unit cost and provider, changing the prescription drug benefit or reviewing pharmacy benefits, narrowing the preferred provider network to provide incentives to utilize cost-efficient providers, moving from choice of plans at point of enrollment to choice of providers--benefits at point of service, reviewing disease and demand management programs for effectiveness, creating customer networks by contracting with care systems, and basing out-of-network payments on in-network discounts. Administration and vendor management tactics include comparing health plan provider contracts; evaluating provider discounts; decreasing or consolidating the number of vendors by market; benchmarking plans, costs, and contributions for competitiveness, and alignment with strategy; and creating planwide medical data bases. Some employers have introduced or increased employee cost-sharing, encouraged employees to enroll in low-cost options, and employed risk-adjusted employee contributions to reflect the true cost of services. Concerning communication education tactics, employers have streamlined the benefits communications delivery model, promoted consumer empowerment and responsibility via increased education, involved participants in health care decisions, and promoted e-health encounters. The committee learned that plan design changes continue to be the most prevalent way to manage costs.

One method to control the increase in health care costs is to utilize consumer-driven health care. The underlying assumption of this tactic is that as employees are exposed to the real cost of services through increased financial responsibility, long-term health care costs and demand decrease. Consumer-driven health care plans are employer-sponsored health benefit programs that educate employees as to the true cost of medical services, hold employees more responsible for medical purchase decisions, require a more educated health care consumer, and will, as health care consumers become financially responsible for more of the real cost of health care services, reduce both demand and long-term health expenses. The committee learned current budget deficits are forcing tough decisions with plan design modifications, introducing increased cost-sharing for participants as a prevalent theme, and leading to the introduction of increased employee contributions.

The committee reviewed the public employee health insurance programs of Minnesota, Wisconsin, Iowa, Alaska, and Illinois. The state of Minnesota is the largest employer in that state. Before 2002 the Minnesota state group insurance program utilized a managed competition model. Under this model, the plan was self-insured with five health plan options. The low-cost "carrier" by county determined the basis for the employer contribution. The plan had a level "playing field" with standardized, uniform benefits for all plans; a common single-family premium ratio; and a primary care physician access-delivery model. Under this plan, health plans and administrators were held financially accountable for plan results. Effective January 1, 2002, Minnesota implemented a tiered network model--the Minnesota Advantage Health Plan. The goals of this plan are to introduce additional cost-sharing, stabilize premium contributions, offer choice of provider flexibility to align incentives and encourage employees to use cost-effective providers and to introduce accountability through the selection of providers, align health plan administrator incentives, reengage the health care

provider community in managing costs, and hold the employer cost increase below 10 percent. Attributes of the Minnesota Advantage Health Plan include grouping of health care providers into provider groups or care systems under which each group has its own referral and hospital admission provisions and employees and dependents can choose their own provider group. Provider groups are arranged into tiers or levels based on an analysis of historical risk-adjusted claims experience. The initial plan had three cost levels, but in 2004 the number of cost levels will be expanded to four. The single and family premium for all cost-benefit levels is the same. This system allows consumers to choose, while being held accountable for that choice. The higher use of cost-effective providers reduces plan costs and increases competition. Cost-sharing is based on the health care providers used, which differentiate copays, deductibles, and coinsurance. The cost-sharing message is reinforced every time the participant receives health care services and the system has the potential for long-term sustainable reform.

The state of Wisconsin has 99,200 employees and retirees. Before 2004 the Wisconsin Department of Employee Trust Funds utilized a managed competition model. Under this model, there were two self-insured plan options. There were approximately 18 fully insured health maintenance organizations with uniform benefits for all health maintenance organizations. However, the health maintenance organizations were required to bid annually against one another with contributions based on the low-cost carrier by county. The state would pay 105 percent of the low-cost plan by county. Historically, 94 percent of employees were enrolled in health maintenance organizations, with 5 percent in the standard plan and 1 percent in the state maintenance plan. Effective January 1, 2004, the Wisconsin state group health insurance program began offering a standard plan with one self-insured preferred provider option, a state maintenance plan for those who do not have access to a tier one health maintenance organization and approximately 16 health maintenance organization managed care options. Other significant changes that were implemented include the grouping of health plans into three different cost tiers or levels based on risk-adjusted experience. Meaningful employee contributions are being introduced and are being based on the health plan tier that the member selects. Pharmacy benefits for all plans have been carved out and will be handled by a single pharmacy benefit manager drug card program.

The state of Iowa offers several health plan options to its employees. There are two indemnity plans administered by WellMark Blue Cross Blue Shield of North Dakota, two preferred provider options administered by WellMark Blue Cross Blue Shield of North Dakota, and six different managed care organization options. The recently concluded Iowa bargaining session resulted in premium increases ranging from 3.8 to 12.5 percent for managed care organizations and approximately 15 percent for indemnity and preferred provider option plans. Iowa increased the office visit copay to $15 for the initial Program 3 Plus and Iowa Select plan options and added same and opposite sex domestic partner coverage for AFSCME, AFSCME judicial, PPME, and noncontract employees. Iowa provides employer-paid dental, life insurance, and long-term disability insurance benefits.

Alaska employs a flexible benefits approach to health insurance for its public employees. Alaska is similar to North Dakota in that it has 14,000 state employees, is a rural state, and has two major population centers. The Alaska Division of Retirement and Benefits offers a choice of three traditional indemnity plans that are self-insured and administered by Aetna. The lowest cost plan does not require an employee contribution for single or family coverage and the state contributes in the form of a benefit credit. Employees pay the differential between the state benefit credit and the option selected, with employees allowed to purchase other plan benefits as well. Similar to North Dakota, Alaska continues to use a composite premium for all coverage types and continues to modify cost-sharing provisions on an incremental basis to align with the state contribution.

Illinois offers several different types of health plan options. The Illinois Bureau of Benefits offers eight different managed care plans, a triple-option preferred provider option type plan with open access to the plan, and a traditional indemnity plan. The Illinois plan requires monthly employee contributions based on salary with employee contributions increasing with higher salary amounts. The managed care plans have the lowest contribution amounts with contributions for family or dependent coverage based on the plan and are in addition to the employee contribution amount. Illinois also contributes toward the cost of other plans, including dental, vision, life insurance, and a rebate of up to $200 per person per year toward the cost of an approved smoking cessation program.

The committee reviewed the *2003 Segal State Health Benefits Survey; Medical Benefits for Employees and Retirees.* The committee learned that the average health expense in 2002 was $5,571 per employee, or 16 percent of wages; that 36 percent of participating states do not require an employee contribution for employee-only coverage; that states subsidize an average of 82 percent of total medical plan expenses for employee coverage; that preferred provider organizations are the most prevalent medical plan type; that health maintenance organizations are most prevalent in the Midwest and West; that regions with similar medical plan enrollment patterns do not have similar health care cost trend rates; and that states are adopting more aggressive cost management tactics but are not considering reducing or eliminating retiree health coverage. More than 60 percent of participating states' indemnity, point of service, and preferred provider organization plans are self-funded. After wages and salaries, health benefits are viewed by employees as their most important benefit. The survey revealed that for the first time in the history of the survey, health benefits have passed retirement benefits in importance to employees.

The committee learned that The Segal Company is projecting an annual percentage increase of 15.6 percent for nonnetwork plans, 14.4 percent for preferred provider organizations, 14 percent for point of service plans, and 13.7 percent for health maintenance organizations. For retirees age 65 and older, The Segal Company is projecting an annual percentage increase of 12.4 percent for Medicare and supplement indemnity plans and 13 percent for Medicare Plus Choice health maintenance organization plans. Concerning 2004 projected prescription drug cost trends, the survey revealed the projected annual percentage increase is 18.2 percent for retail drugs and 17.6 percent for mail-order drugs for actives and retirees less than 65 years of age and an increase in retail prescription drugs of 16.2 percent and 17.3 percent in mail-order drugs for retirees older than 65 years of age. The survey results show that some employers have shifted a portion of the cost of health insurance to their employees and in some cases the increase absorbed by employees is larger than their pay increase for the same period. Annual medical premium costs for employees increased from $5,609 in 2002 to $6,125 in 2003 with the employer share remaining at 88 percent and the employee share at 12 percent. The employee premium cost-sharing for the most prevalent plan is 10 percent for employee-only plans and 22 percent for employee and family plans. For retirees, the average retiree share is 43 percent for retiree-only plans for retirees under 65 years of age and 53 percent for the retiree and spouse when the retiree is under 65 years of age. The cost-share for retirees under a retiree-only plan for retirees 65 years of age and over is 43 percent and 56 percent for retiree and spouses for retirees 65 years of age and over.

Concerning deductibles, The Segal Company survey revealed that the average deductible has increased by 30 percent since 1999 with the average deductible for indemnity plans $310, $360 for in-network services in a preferred provider organization, and $671 for out-of-network services in a preferred provider organization. Fifty-five percent of plans have doctor office visit copayments of $15 or higher. The Public Employees Retirement System plan has a preferred provider organization doctor office visit copayment of $20. The committee learned that 25 percent of plans have individual out-of-pocket maximums of $0 to $1,000; 17 percent of plans have individual out-of-pocket maximums of $1,001 to $1,500; 13 percent of plans have individual out-of-pocket maximums of $1,501 to $2,000; and 46 percent of plans have individual out-of-pocket maximums of more than $2,000. The composite annual premium cost and trend rates for employee coverage by plan type for 2002 and 2003 indicates that indemnity plan premiums increased from $6,832 to $7,696, a trend rate of 12.7 percent; preferred provider organization plan premiums increased from $5,334 to $6,138, an increase of 15.1 percent; point of service plan premiums increased from $5,911 to $6,795, an increase of 14.9 percent; and health maintenance organization plan premiums increased from $5,486 to $6,280, an increase of 14.5 percent.

A representative of The Segal Company reported that states have implemented several cost management programs with 81 percent of states utilizing hospital inpatient precertification requirements, 75 percent of states utilizing disease management programs, 72 percent of states utilizing prescription drug prior authorization requirements, 69 percent of states utilizing claims payer auditors, 50 percent of states utilizing outpatient precertification requirements, 50 percent of states utilizing hospital bill audits, 47 percent of states utilizing prescription drug clinical intervention requirements, 44 percent of states utilizing centers of excellence, 28 percent of states utilizing utilization review vendor audits, 25 percent of states utilizing employee self-audits, and 6 percent of states utilizing health reimbursement accounts.

Concerning cost management programs, a representative of The Segal Company reported that 87 percent of states are considering higher member copayments, 60 percent of states are considering disease management programs, 84 percent of states are considering increasing employee contributions for dependent coverage, 78 percent of states are considering increasing employee contributions for employee coverage, 67 percent of states are considering implementing group purchasing coalitions, 53 percent of states are considering reducing plan offerings, 51 percent of states are considering implementing consumer-driven health plans, 27 percent of states are considering the elimination of certain providers, 15 percent of states are considering reducing retiree health benefits, 30 percent of states are considering implementation of three-tiered hospital networks to control cost, 24 percent of states are considering implementing retiree medical accounts, 24 percent of states are considering eligibility requirements, 3 percent of states are considering eliminating Medicare Plus Choice offerings. However, the committee learned that no state is considering eliminating retiree health benefits at this time.

Concerning prescription drug plan design features, The Segal Company reported that very few states offered three-tiered prescription drug programs in 1999, while now 66 percent of states offer three-tiered drug prescription programs. The three tiers are generic drugs, formulary prescription drugs, and nonformulary prescription drugs. Eight percent of prescription drug plans now have deductibles, 18 percent have copayments, and 26 percent have out-of-pocket maximums. Seventy-one percent of states encourage the use of formulary drugs for employees and 70 percent for retirees but states do not maintain tightly controlled formulary designs, prohibiting reimbursement for nonformulary drugs.

The committee learned that steps other states are taking to address the increase in health care costs are increasing premiums, changing plan designs to shift or balance the cost from employer to employee with increases in copayments and coinsurance, not providing pay increases and designating any pay increase as an increase in health insurance premiums and communicating this to the employees and educating

employees as to what their total compensation is, including benefits.

The committee received information from representatives of Blue Cross Blue Shield of North Dakota concerning perspectives on health insurance costs, trends, and plan designs in North Dakota. The committee learned that health care comprises 14.8 percent of the gross domestic product and is expected to rise to 17.7 percent by the year 2012. The factors driving health care costs include inflation; drugs, medical devices, and other medical advances; rising provider expenses; government mandates and regulations; increased consumer demand; litigation and risk management expenses; and other miscellaneous costs. A greater percentage of each health care dollar is being spent on prescription drugs and the percentage of each health care dollar consumed by institutions is decreasing. The percentage of health care dollars consumed by professional services is remaining steady. The committee learned that the 2003 rate for the average Select Choice 250 family premium plan was $594 and the rate for this plan was projected to be $653 in 2004. Thus, the Public Employees Retirement System rate is lower than the average Select Choice 250 family premium rate. Blue Cross Blue Shield of North Dakota reported that it is noting an incremental increase in the cost share across products and increase in the most popular deductible from $100 to $200 and a trend toward a $500 deductible. Also, the member cost share as a percentage of the allowed cost has increased from 14.9 percent in 1991 to 20 percent in 2002.

The committee reviewed the existing public employees uniform group insurance plan designs and the impact of implementing several plan design changes. The executive director of the Public Employees Retirement System testified that the public employees uniform group insurance plan design is a consumer-driven plan design with different levels of coverage provided to encourage members to use providers that are the most cost-effective for the plan, including exclusive provider organizations and preferred provider organizations. The plan design rewards those who do not use services and the plan design provides a fee for usage of services through copayments and deductibles. The deductible for nonphysician services is $250 for individuals in the basic and preferred provider organization plans and $100 for the exclusive provider organization plan. The deductible for a family plan is $750 for the basic and preferred provider organization plans and $300 for the exclusive provider organization plan. In 2003 the employer paid 63 percent of prescription drug claims while the employee paid 37 percent of prescription drug claims. If deductibles were eliminated, there would be a 3.3 percent increase in premiums and if all cost share were eliminated, there would be a 25.4 percent increase in premiums. The executive director reported that essentially the employer is paying 75 percent of an employee's health insurance costs while the employee is paying 25 percent.

The committee learned that with the withdrawal of PrimeCare, Medcenter One, and Greater Plains Clinic, the exclusive provider organization option is no longer available in western North Dakota and is restricted to eastern North Dakota. The committee learned that 20 percent of members consume 80 percent of the money spent for health care. To address this issue, the executive director reported that the Public Employees Retirement System has hired a full-time case manager to institute a case management system, a prenatal plus program, a smoking cessation program, and a wellness program.

The case management system is designed to slow the increase in health care costs. It has been shown that 20 percent of a plan's participants incur 80 percent of the expenses and if the cost of the 20 percent portion can be controlled or mitigated, it will help the financial status of the overall plan. Blue Cross Blue Shield of North Dakota created a Medical Management Division in 1998-99 that now does prior approvals, referrals, psychiatric and substance abuse review, disease management, chiropractic review, pharmacy review, and case management. The mission of the case management department is to have a positive impact on the health care needs of the members of Blue Cross Blue Shield of North Dakota by assuring quality, cost-effective health care across the continuum of care. Case management is important in coordinating and ensuring that the members of Blue Cross Blue Shield of North Dakota receive the most appropriate and effective health care possible. The case management program also allows for benefits outside the scope of coverage when these benefits are medically appropriate and cost-effective. In recognition of ever-increasing health care costs, particularly in light of new technology and complex treatment methods, additional case management was deemed necessary. Based on a request for assistance by the Public Employees Retirement System in this area, Blue Cross Blue Shield of North Dakota assigned a dedicated case manager to the Public Employees Retirement System group. During the period July 1, 2001, to June 30, 2002, 122 people, or .3 percent, of the total members of the Public Employees Retirement System had claims in excess of $50,000. The total benefit payments to this group were $11.8 million, or 17 percent, of the total claims experienced by the Public Employees Retirement System group. During the period July 1, 2002, to June 30, 2003, 155 members had claims in excess of $50,000 for total benefit payments of $13.8 million. The percentage of members with claims in excess of $50,000 was only .3 percent of the total members but accounted for 17 percent of the total benefit payment. The case management program was designed to monitor heart disease, malignancies, respiratory conditions, congenital anomalies, cerebral vascular disease, musculoskeletal disease, blood disorders, mental disorders, and newborn complications. Blue Cross Blue Shield of North Dakota estimated case management savings of $1.4 million for the year 2003. Representatives of Blue Cross Blue Shield of North Dakota reported that the case

management savings were achieved by arranging for patient care in less costly facilities, negotiating reduced pricing for durable medical equipment, extending outpatient visits to prevent inpatient stays, and reducing pricing for prescription medications.

The prenatal plus program was developed to identify women at risk for premature delivery and to prevent incidence of preterm births. The program consists of assessment, intervention, and education for participants during their pregnancy but is voluntary. The Public Employees Retirement System has implemented incentives for members to participate in the prenatal plus program, including waiver of the mother's deductible for claims and waiver of copayments for prenatal vitamins. Participation in the prenatal plus program has increased from 131 (30 percent) of deliveries in 2001 to 207 (38 percent) of deliveries in 2003. Blue Cross Blue Shield of North Dakota and the Public Employees Retirement System reported that they are working to enhance prenatal plus program participation by establishing an appropriate benchmark for participation, investigating incentives for providers, if appropriate, reviewing appropriate design changes, and researching what other carriers are doing in this area.

The committee also reviewed the Public Employees Retirement System tobacco cessation program. All state employees and their family members who are 18 years of age and older are eligible to participate in the tobacco cessation program. Employees of political subdivisions, retirees, and people under COBRA coverage are not eligible. Under the program, the member decides when the member is ready to quit and then contacts one of the providers participating with the program. The provider verifies the member's eligibility as a state employee and initial assessment is completed. The program pays $200 for counseling, 75 percent of the cost of medications up to $375 with the participant paying 25 percent up to $125, and 75 percent of a physician's office visit up to $50 with the participant required to pay 25 percent up to $16.67.

The committee also received an update concerning the renewal of the state health insurance plan contract. The executive director of the Public Employees Retirement System informed the committee that health insurance plan bids for the ensuing six-year period are being evaluated. The executive director reported that the Retirement Board received two responses--one from Blue Cross Blue Shield of North Dakota and one from CoreSource. However, the CoreSource bid was for the retiree health program only. The Retirement Board received letters declining to bid from 11 providers and did not receive responses from eight other health insurance providers. The Blue Cross Blue Shield of North Dakota monthly rate for the 2003-05 biennium is $498.70 which, including the $10 buydown, means $488.70 is the billed rate to the state. The Blue Cross Blue Shield of North Dakota proposed fully insured rate for the 2005-07 biennium is $579.33. The estimated gain for the 2005-07 biennium is $14 million, which if allocated back to the state would reduce premiums by about $24.52 per contract. The committee learned that in addition to the case management program, prenatal plus program, and smoking cessation program, the Retirement Board is implementing a disease management program, wellness pilot program, and capping out-of-pocket expenses for formulary prescription drugs at $1,000 per member. Other initiatives that the Retirement Board is implementing include a prescription network change, prescription mail-order option, and legislation to promote competition.

Concerning prescription drugs, a representative of Blue Cross Blue Shield of North Dakota reviewed state health plan drug discounts and out-of-pocket expenses incurred by members of the state health plan. Concerning the long-term growth costs per member per month for the prescription drug program, the committee learned the change in the allowed and paid per member per month for prescription drugs for the third quarter of 2003 increased 8 to 10 percent over the same period in 2002. The representative of Blue Cross Blue Shield of North Dakota reported that as the cost of prescription drugs increases, the cost also increases for employees because of the corresponding increase in coinsurance and deductibles. Blue Cross Blue Shield of North Dakota works with its pharmacy benefit manager to control the rate of pharmacy spending through contracted pharmacy network discounts, benefit design, drug manufacturer discounts or rebates, utilization management, and accurate claim adjudication. The committee learned pharmaceutical manufacturers may provide retrospective discounts or rebates on brand name drugs based on formulary status, benefit design, or utilization of the drug. The Public Employees Retirement System pharmacy benefit design employs a tiered-benefit design using differential copayment and coinsurance amounts to encourage generic and formulary drug use.

Concerning the reimportation of Canadian prescription drugs, the committee received updates from a representative of the Governor's office on developments in North Dakota and in other states concerning this issue. The committee learned that the Governor established a web site in April 2004 that allows North Dakota consumers to access two Canadian pharmacies that have been inspected by state representatives. The Governor's representative reported that the Canadian pharmacies measure up in every respect and the Governor's office has not received a single complaint concerning the quality of drugs reimported from Canada. The committee learned that states and municipalities have developed several types of drug reimportation methods or models. One model is known as the city model and is being used by Springfield, Massachusetts, and explored by Boston, Massachusetts. Under this model the city pays for and processes individual employee or member orders for prescription drugs. This model is opposed by the Food and Drug Administration. The Food and Drug Administration is trying to dissuade the city of Boston from pursuing this model and may sue the city of Springfield to halt its drug reimportation efforts. The second model is the state seek permission model to reimport drugs for all purposes. The states of

Illinois and Iowa have pursued this method and the Food and Drug Administration has refused to grant permission. The third model is the medicine assist model first utilized by the United Health Alliance of Vermont. Minnesota is following this model and the Governor's office is also exploring this model. This model provides a web site with access to Canadian pharmacies that the United Health Alliance has inspected for safety and compliance with Canadian laws. Under this model, the individual voluntarily participates and processes his or her drug orders and only the link is provided by a governmental entity. New Hampshire, West Virginia, Minnesota, Massachusetts, Michigan, Vermont, Utah, and Oregon are exploring this model. The medicine assist program is similar to the current practice of individuals traveling to Canada, mailing orders to Canada, or ordering prescription drugs over the Internet that the Food and Drug Administration has declined to enforce to date. The committee learned there are a number of factors that are driving the debate in the direction of the medicine assist program. First, it has been the policy of the Food and Drug Administration to allow individuals to import prescription drugs for their own use. In addition, Health Canada has taken the position that Canadian pharmacies may continue to supply individuals, but if they go beyond that and supply groups, such as employee groups, Health Canada will intervene because of concerns of maintaining an adequate supply of prescription drugs in Canada. Finally, United States pharmaceutical groups have started to discuss limiting supplies of drugs to Canada, which has caused concerns in Canada.

The executive director of the Board of Pharmacy discussed the reimportation of Canadian prescription drugs with the committee. The executive director testified that the responsibility of the Board of Pharmacy is to regulate and license pharmacies in North Dakota to ensure that North Dakota consumers are receiving their prescription drugs from a licensed pharmacist. The executive director testified that the importation of prescription drugs from Canada is illegal if it is done through the mail or common carriers are used. In addition, the executive director testified that if an individual travels to Canada and purchases prescription drugs for reimportation into the United States it is also illegal but the Food and Drug Administration has declined to prosecute this practice.

The committee received testimony from a representative of Blue Cross Blue Shield of North Dakota concerning its policy relating to the reimbursement by Blue Cross Blue Shield of North Dakota for drugs purchased in Canada by Public Employees Retirement System members. The representative reported that in April 2003 Blue Cross Blue Shield of North Dakota sent letters to its members indicating that it would no longer reimburse its members for prescription drugs and medications obtained from a foreign pharmacy and imported into the United States. The basis for this policy was determined, in part, on regulatory actions initiated by the Food and Drug Administration relating to stemming the importation of foreign prescription drugs and medicines. The Blue Cross Blue Shield of North Dakota representative reported that Senator Byron Dorgan and representatives from Blue Cross Blue Shield of North Dakota met with Food and Drug Administration officials to clarify that agency's position relating to Blue Cross Blue Shield of North Dakota payment to members reimbursing them for foreign-bought prescriptions. The representative reported that while stopping short of providing assurances that such a policy being administered by a domestic insurance company did not violate the federal Food, Drug, and Cosmetic Act, the Food and Drug Administration couched such a policy as "passive reimbursement" and indicated that the federal government had not prosecuted any entity for following such a reimbursement policy since the federal law was first enacted.

Based on this representation from the Food and Drug Administration and as a service to Blue Cross Blue Shield of North Dakota and Public Employees Retirement System members, Blue Cross Blue Shield of North Dakota determined to again reimburse its members importing foreign prescription drugs in this limited circumstance. On April 5, 2004, Blue Cross Blue Shield of North Dakota forwarded letters to its members who previously received notification in April 2003 indicating a change in its reimbursement policy. Thus, although Blue Cross Blue Shield of North Dakota will reimburse members for prescription drugs obtained outside the United States, reimbursement in such cases may be limited by the place and manner in which prescription drugs are obtained. The representative of Blue Cross Blue Shield of North Dakota cautioned that even though it is reimbursing for prescription drugs imported into the United States, it does not warrant nor endorse the use, safety, or effectiveness of such prescription drugs and medications. The representative of Blue Cross Blue Shield of North Dakota reaffirmed that in most cases importing prescription drugs and medications into the United States from a foreign country violates federal and state law. The representative also noted that Blue Cross Blue Shield of North Dakota has cautioned its members that foreign-source drugs purchased by or for individuals may be unapproved, labeled incorrectly, and dispensed without a valid prescription. As a result, these prescription drugs may be counterfeit, contaminated, subpotent, or contain addictive or other dangerous substances.

The committee reviewed the implementation and operation of health savings accounts. Section 1201 of the federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003 permits eligible individuals to establish health savings accounts for taxable years beginning after December 31, 2003. A health savings account is a tax-exempt trust or custodial account established exclusively for the purpose of paying qualified medical expenses of the account beneficiary who, for the months in which contributions are made to the health savings account, is covered under a high-deductible health plan. A high-deductible health plan is a health plan that satisfies certain requirements with respect to deductibles and out-of-pocket expenses.

Specifically, for self-only coverage, a high-deductible health plan has an annual deductible of at least $1,000 and annual out-of-pocket expenses required to be paid (deductibles, copayments, and other amounts, but not premiums) not exceeding $5,000. For family coverage, a high-deductible health plan has an annual deductible of at least $2,000 and annual out-of-pocket expenses required to be paid not exceeding $10,000.

Generally, an individual purchases a high-deductible insurance policy that is paired with an appropriately designed health savings account. The individual receives a tax deduction for money personally contributed to the account each year. Employers may also contribute to the account. The individual pays medical expenses out of pocket and is reimbursed through funds from the account, similar to a flexible benefits plan, until the deductible on the insurance policy is met. Once the deductible is met, coverage under the insurance policy takes over to pay the medical bills. At yearend, the funds remaining in the health care savings account are carried over to the next year and accumulate on a tax-deferred basis. A representative of Gallagher Benefit Services, Inc., testified that the major impetus for health savings accounts is that it is becoming evident that no new savings will be realized from managed care and the next generation of savings in health care will come from consumer-driven health care. Consumer-driven health care gives consumers a stake in the provision of their health care which causes them to utilize health care resources more economically. Gallagher Benefit Services, Inc., reported that it has identified generally high levels of satisfaction with health savings accounts, reenrollment of between 94 and 97 percent, that 50 to 60 percent of participants have rollovers, and that 30 percent of dollars invested in the accounts are rolled over.

The deputy insurance commissioner testified that the Insurance Department has identified two insurance mandates established by state statute that limit a company's ability to offer high-deductible group insurance policies in North Dakota and that this may act as an impediment to the implementation of health savings accounts in the state. North Dakota Century Code Section 26.1-36-08 requires group policies to provide first-dollar insurance coverage for the first five outpatient treatments for substance abuse each calendar year and Section 26.1-36-09 requires group policies to provide first-dollar insurance coverage for the first five hours of outpatient mental health treatments per calendar year.

The committee reviewed the health insurance plans of other large private and public employers in the state. The committee received information on the Hedahl's, Inc., health insurance plan, city of Bismarck health insurance plan, city of Fargo health insurance plan, and Fargo Public School District health insurance plan. The committee learned that Hedahl's, Inc., is a regional automobile parts distributor based in Bismarck. The company has 16 automobile parts stores and three other facilities--a tire company, an equipment sales company, and warehouse facility. Hedahl's, Inc., has 182 employees, over half of whom are located in North Dakota. The company has a self-funded group insurance plan through Blue Cross Blue Shield of North Dakota. In 1986 the plan had a $25 deductible and was a very comprehensive plan. In 1991 the cost to the company of the plan was $313,000, and in 1992 the cost of the plan was $570,000, and the company knew it had to take steps to address the escalating cost of health insurance for its employees. Hedahl's, Inc., reviewed its policies and determined that if it could convince its employees to lead healthier lifestyles, it would decrease future health care costs. Thus, Hedahl's, Inc., implemented a bonus or incentive program, whereby employees were monetarily rewarded for leading healthier lifestyles. The program is funded from a portion of the funds the company used to pay for health insurance. Employees can earn $25 a month for maintaining their weight within certain guidelines, $25 a month for not using tobacco, and $25 a month for agreeing not to consume more than four alcoholic beverages during any calendar day. Thus, employees can earn $75 a month or $900 a year in wellness earn-back dollars. If an employee is married, and the employee's spouse also accomplishes these goals, he or she can earn an additional $900. In addition, the company has implemented an early detection screening program, consisting of cancer screening, cholesterol check, blood pressure check, and blood sugar check. Upon proof of completion of any of these tests, the employee and spouse are each entitled to receive $25 in wellness earn-back dollars for each test completed. In conjunction with the flexible benefit and wellness earn-back plan, the company revised its health insurance plan to implement a $250 deductible and a $10,000 stop-loss provision. In addition, the company contributes $100 in pretax money to a Section 125 plan. Added to this, is the potential $150 from the wellness plan, giving the employee $250 to purchase benefits through the Section 125 plan. For fiscal year July 1, 1994, through June 30, 1995, the cost of the family plan was $360 per month. The current cost of the Hedahl's health insurance plan is $385 per month.

The director of Human Resources for the city of Bismarck reviewed the city of Bismarck's health insurance plan. The director reported that the city's plan is a self-funded health insurance plan with Blue Cross Blue Shield of North Dakota as the third-party administrator. The plan has a $50,000 stop-loss provision and the rate of increase in health care premiums has been approximately half that for cities in Bismarck's peer group. The plan currently has 92 single plans and 413 family plans. The premium for a single plan is $180.04 and the premium for the family plan is $434.16. The plan has an 80/20 copayment with a $150 deductible for the single plan and $450 deductible for the family plan. The total out-of-pocket expense for a single plan is $1,150 and the maximum for the family plan is $3,450.

The director reported that some of the unique steps the city of Bismarck has taken include holding an annual meeting with the city's employees where utilization is reviewed; establishing a wellness initiative, whereby each employee can obtain a wellness prescription and the employee is advised on an individual basis on

measures to take to improve that employee's health; and providing each employee an annual medical screening.

The director of finance and the director of human services for the city of Fargo reviewed the city of Fargo's health insurance plan. The committee learned that the premium charged for health insurance benefits is $290 per month for single coverage and $776 per month for family coverage. The city of Fargo pays 86 percent of the single premium and 72 percent of the family premium. A single employee pays $40 per month while employees carrying family coverage pay $214 per month. The city of Fargo also provides life insurance, sick leave, and dental insurance in addition to the pension plan and health insurance plan for its employees.

The assistant superintendent for business for the Fargo Public School District reviewed the health insurance plan for the Fargo Public School District. The Fargo Public School District health insurance plan is a self-funded group health and dental plan and the third-party administrator is Blue Cross Blue Shield of North Dakota. The assistant superintendent for business reported that if present trends continue, the Fargo Public School District will be incurring $280,820 in claims per week by the year 2010. Total health care costs would increase from $7 million to $14 million. To slow this trend, the Fargo Public School District is expanding its wellness program, providing health care inventory program services, increasing deductibles and copayments, and exploring instituting health savings accounts. Under the current plan the employer pays 82.5 percent and the employee pays 17.5 percent of the health insurance premium. The premium for a family plan is $613. The deductible is $500 for the first person and $1,000 for the contract and the total out-of-pocket expenses are $2,000 for the first person and $4,000 for the contract. The Fargo Public School District provides a 100 percent employer-funded group disability plan, term life insurance with supplemental coverage options, and dental coverage in addition to the health insurance benefit.

CONCLUSION

The committee makes no recommendation concerning its public employee health insurance study.

GOVERNMENT PERFORMANCE AND ACCOUNTABILITY COMMITTEE

The Government Performance and Accountability Committee was assigned the responsibility to study state government performance and accountability practices as directed in House Bill No. 1497 and to monitor the status of state agency appropriations as directed by the Legislative Council.

Committee members were Representatives Al Carlson (Chairman), Ken Svedjan, and Dave Weiler; Senators Randel Christmann, Michael A. Every, and Ray Holmberg; Citizen Members Dick Hedahl and John Patrick Traynor; and Executive Branch Members Pam Sharp and Gordy Smith.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2004. The Council accepted this report for submission to the 59th Legislative Assembly.

GOVERNMENT PERFORMANCE AND ACCOUNTABILITY STUDY

House Bill No. 1497 (2003) directed the Legislative Council to study state government performance and accountability practices. The study was to include a review of other states' performance budgeting practices and strategic planning efforts and how those practices and efforts may apply to North Dakota and improve North Dakota's budgeting process.

Performance Budgeting History in North Dakota

1993-94 Interim

The 1993-94 Budget Section requested that the Office of Management and Budget ask all agencies and institutions to include, to the extent possible, service efforts and accomplishments in the 1995-97 budget request forms and to use this information to support the executive budget. Service efforts and accomplishments are measures used to evaluate agency performance. The Office of Management and Budget developed a pilot project to incorporate service efforts and accomplishments into the budgeting process. The Office of Management and Budget developed statewide goals, objectives, and strategies and chose the following 14 budgets in 12 agencies to be involved in the program-based performance budgeting pilot project for the 1995-97 biennium:

1. Office of Management and Budget.
2. Information Services Division of the Office of Management and Budget.
3. State Auditor.
4. Central Services Division of the Office of Management and Budget.
5. Board of University and School Lands.
6. Department of Human Services - Aging Services - Vocational Rehabilitation Division.
7. Insurance Department.
8. Securities Commissioner.
9. Highway Patrol.
10. Department of Corrections and Rehabilitation - Parole and Probation Division.
11. Department of Economic Development and Finance.
12. Department of Tourism.
13. Parks and Recreation Department.
14. Department of Transportation.

Budget requests of these pilot agencies included information in support of meeting statewide and agency goals, objectives, and strategies. Under each major program of an agency, goals, objectives, and strategies were listed as well as the description and justification of the strategy and performance measures, including outcome, output, efficiency, effectiveness, and explanatory measures. The appropriation bills for these agencies included program line items rather than object code line items.

1995 Legislative Assembly

The 1995 Legislative Assembly chose to appropriate funds on a program basis rather than the traditional object code basis for 9 of the 14 pilot budgets:

1. Office of Management and Budget.
2. Information Services Division of the Office of Management and Budget.
3. State Auditor.
4. Central Services Division of the Office of Management and Budget.
5. Board of University and School Lands.
6. Highway Patrol.
7. Department of Corrections and Rehabilitation - Parole and Probation Division.
8. Parks and Recreation Department.
9. Department of Transportation.

The remaining five agencies listed below received object code line item appropriations but were expected to continue to monitor and strive to achieve agency performance measure goals and objectives:

1. Department of Human Services - Aging Services - Vocational Rehabilitation.
2. Insurance Department.
3. Securities Commissioner.
4. Department of Economic Development and Finance.
5. Department of Tourism.

The section below was included in 1995 Senate Bill No. 2015 providing legislative intent for the performance budgeting pilot project.

> **SECTION 9. INTENT - PROGRAM-BASED PERFORMANCE BUDGETING.** It is the intent of the fifty-fourth legislative assembly that the office of management and budget continue the 12 agency program-based performance budgeting pilot project through the 1997-99 biennium. Periodic reports shall be made to the budget section

during the 1995-97 biennium of actual to planned expenditures by program and comparisons of planned to actual outcome, output, and efficiency and effectiveness measures. The budget section shall make a recommendation to the fifty-fifth legislative assembly regarding the continuance or expansion of program-based performance budgeting.

1995-96 Interim

As part of the performance budgeting pilot project, the Office of Management and Budget prepared agency performance reports included in *North Dakota Delivers* based on the measures developed for each agency.

The 1995-96 interim Budget Section reviewed reports on the pilot project and asked the Office of Management and Budget to continue to work with only the nine budgets in the development of the 1997-99 biennium budget requests and executive recommendation and that those agencies be subject to program reviews. In addition, the Budget Section asked that the appropriation bills for the 1997-99 biennium for the agencies with program line items include a separate section identifying the amounts for salaries and wages, operating expenses, equipment, and grants for each agency. The Budget Section also recommended that the 1997 Legislative Assembly review the program-based performance budgeting pilot project and determine if the project should continue.

1997 Legislative Assembly

The 1997 Legislative Assembly continued the program line item appropriations for the nine pilot budgets and object code line item appropriations for the remaining five agencies. The Legislative Assembly included a separate section in the appropriations bill for each of the agencies with program line items identifying the amounts appropriated by object code also. The Legislative Assembly did not include a section providing for reporting of the agencies' performance measures.

1997-98 Interim

The 1997-98 interim Budget Committee on Government Finance studied, pursuant to House Concurrent Resolution No. 3045, the current budgeting process, the results of the program-based performance budgeting pilot project, budget reforms in other states, and the feasibility of developing a legislative budget.

The committee recommended Senate Bill No. 2031, which was not approved by the 1999 Legislative Assembly but which would have required the Legislative Council to create a legislative budget committee to coordinate and direct activities involved in the development of budget recommendations to assist the Legislative Assembly as it develops the final legislative budget. The estimated cost of implementing provisions of the bill was $439,000 per biennium.

The 1997-98 interim committee also reviewed the history of program-based performance budgeting in North Dakota and other states and recommended that if the program-based performance budgeting pilot project were to continue, the Appropriations Committees should review agencies' performance and create, with agencies' input, performance measures for those agencies. Senate Bill No. 2031 also included a section indicating that a goal of the budgeting process is to include historic and anticipated agency performance as supporting information for budget recommendations.

1999 Legislative Assembly

The 1999 Legislative Assembly, in Senate Bill No. 2015, directed the Office of Management and Budget to discontinue the program-based performance budgeting pilot project when preparing the 2001-03 executive budget. The following agencies that were involved in the performance budgeting pilot project continued to have program-based line items in their appropriation bills:

1. Highway Patrol.
2. Department of Corrections and Rehabilitation - Adult Services Division.

Although the appropriation bills for these agencies contained program line items, the detailed supporting budget information identified the amounts provided for each program by object code (salaries and wages, operating expenses, etc.).

2001 and 2003 Legislative Assemblies

Although the performance budgeting pilot project was discontinued after the 1999-2001 biennium, a number of agency appropriations are made by programmatic line item rather than object code line item. The schedule below lists the types of line item appropriations for agencies for the 2003-05 biennium:

Agencies With Object Code Line Items	Agencies With Program Line Items
NOTE: Boldfaced agencies were a part of the performance budgeting pilot project.	
Legislative branch	Department of Veterans Affairs
Judicial branch	**Highway Patrol**
University System[1]	**Department of Corrections and Rehabilitation**
State Department of Health	Upper Great Plains Transportation Institute
Indian Affairs Commission	Northern Crops Institute
Aeronautics Commission	NDSU Extension Service
Veterans Home	Agricultural Experiment Station
Department of Financial Institutions	Protection and Advocacy Project
State Fair	State Water Commission
Council on the Arts	Workforce Safety and Insurance
Department of Transportation	
Land Department	
Children's Services Coordinating Committee	
Industrial Commission and related agencies	

Agencies With Object Code Line Items	Agencies With Program Line Items
Job Service North Dakota	
Office of Administrative Hearings	
Department of Commerce	
State Board for Career and Technical Education	
Information Technology Department	
Governor's office	
Secretary of State	
Attorney General	
State Auditor	
State Treasurer	
Tax Commissioner	
Labor Commissioner	
Public Service Commission	
Agriculture Commissioner	
Insurance Commissioner	
Securities Commissioner	
Department of Human Services	
Department of Public Instruction	
State Library	
School for the Deaf	
North Dakota Vision Services - School for the Blind	
Office of Management and Budget	
Division of Emergency Management	
Adjutant General	
Seed Department	
Game and Fish Department	
State Historical Society	
Parks and Recreation Department	
Retirement and Investment Office	
Public Employees Retirement System	

[1]The University System has two line items per campus appropriation.

The committee learned the primary reasons the Legislative Assembly chose to discontinue the performance budgeting pilot project were:

1. The system focused too much on detailed inputs and outputs of agency programs, rather than outcomes or results.
2. The detailed performance budgeting information required more time to analyze than was available during a legislative session.
3. The performance measures were selected by agencies, with little input from legislators.
4. The focus was on agencies wanting program rather than object code line items in the appropriation bills.

North Dakota Agency Reporting of Performance Information

The committee reviewed the following questions asked of each agency during the 2003 legislative session by the House and Senate majority leaders relating to the purpose and performance of the agency:

1. What is the main purpose of your agency?
2. How do you measure the achievement of your purpose?
3. What can the legislature do, financially and otherwise, to help you achieve your purpose?
4. How can you report (measure) your results so the public can easily understand your purpose and evaluate your effectiveness?

Agencies submitted responses to the Appropriations Committees during the 2003 legislative session for the committees' information and review.

The committee reviewed the current performance reporting efforts of the following state agencies:

1. **University System** - Section 18 of House Bill No. 1003 (2003) provides the accountability measures that are to be included in the State Board of Higher Education annual performance and accountability reports required by North Dakota Century Code (NDCC) Section 15-10-14.2. The section also requires the board to develop a strategic plan to define and prioritize University System goals and objectives. University System measures relate to education excellence, economic development, student access, student affordability, and financial operations.
2. **Department of Commerce** - Section 9 of House Bill No. 1019, approved by the 58th Legislative Assembly (2003), provides that the Department of Commerce report to either the Budget Section or another interim Legislative Council committee on North Dakota's economic goals and associated benchmarks. The Legislative Council assigned the responsibility to receive these reports to the interim Economic Development Committee. (The 2001 Legislative Assembly also had required the department to establish performance measures and to report to the Budget Section on the department's progress in meeting its measures after the first year of the 2001-03 biennium.)

   The Department of Commerce in cooperation with Job Service North Dakota, the Department of Human Services, and the University System is also to report on the number of individuals trained and the number who became employed as a result of each department's workforce development and training programs, including the state's investment, the areas of occupational

training, the average annual salary of those employed, and the average increase in earnings 12 months after completion of training.

The department has completed a 10-year strategic plan and completed its first performance report in 2003.

3. **Information Technology Department** - For the 2001-03 biennium, a section of legislative intent was included in 2001 House Bill No. 1043 providing that the Information Technology Department establish measures to assist the Legislative Assembly in determining the effectiveness and efficiency of the department's operations and report to the Information Technology Committee, the Budget Section, and the Legislative Audit and Fiscal Review Committee on the measures developed. North Dakota Century Code Section 54-59-19 requires the Information Technology Department to prepare an annual report for presentation to the Information Technology Committee, the Budget Section, and the Legislative Audit and Fiscal Review Committee. Although this section does not specifically require the department to include performance measure information, the department has been including performance information in the report.
4. **Department of Transportation** - The department completed its strategic plan for the years 2002 through 2008, which it updates annually. The department is in the process of developing measures that will relate to safety, system preservation and maintenance, budget management, project delivery, and employees.
5. **Highway Patrol** - The Highway Patrol has incorporated several operational objectives into its multiyear plan that it evaluates annually. The measures allow the Highway Patrol to evaluate its enforcement programs, educational programs, and prevention efforts. The measures also serve as a guide in determining what federal funds to pursue to assist in the Highway Patrol's mission. The agency reviews specific activities and projects annually as part of its program evaluations. Activities reviewed include miles of road patrolled, highway assists, accidents investigated, and vehicle safety inspections. Performance measures of the Highway Patrol include the number of fatalities per 100 million vehicle miles traveled, percentage of alcohol-related fatal crashes, total crashes per 100 million vehicle miles traveled, and seatbelt usage.
6. **Department of Human Services** - The department began its strategic planning efforts in 1998. Each division within the department developed program purpose statements and results measures that relate to the department's mission statement. The department's strategic plan contains two types of information:
   a. Program output/demand information, which is used to measure program results or the quantity of program services. It is often used to predict trends in program use and demand.
   b. Program results/efficiency information, which is used to measure how well a program's processes work or how efficiently the program is delivering services.
7. **Department of Corrections and Rehabilitation** - The department has had a strategic plan since 1997. The department develops and maintains two plans--one for the adult population which is for a two-year period and one for the juvenile population which covers a five-year period. Key performance measures for the Department of Corrections and Rehabilitation include those relating to public safety, institutional safety, education and treatment, and staff.
8. **State Department of Health** - The department began its first departmentwide strategic planning effort during the 2003-05 biennium. Previous planning efforts related to specific programs or were required by federal grants.
9. **Bank of North Dakota** - The Bank develops an annual strategic plan that contains specific objectives for each business unit of the Bank. The objectives are reviewed quarterly. The three major areas of evaluating the Bank's performance are:
   a. Financial performance - Standards for financial performance of banks are maintained within the banking industry and are useful for measuring the Bank's financial performance.
   b. Accomplishment of its mission - The Bank evaluates the extent to which it meets its mission to deliver quality, sound financial services that promote agriculture, commerce, and industry.
   c. Legislative expectations - The Bank monitors whether it is achieving the expected level of revenue for the state general fund each biennium.
10. **Workforce Safety and Insurance** - The agency has developed a performance measurement and accountability system that includes objective performance measures that help to ensure that the agency is fulfilling its responsibilities to workers and employers in North Dakota. Key components of the system include:
    a. The board governance policy manual that includes expected levels of performance and provides proposed measurements for assessing the achievement of these outcomes.
    b. A strategic planning process that establishes the short-term and long-term plan for

the organization and development of 10 strategic goals.

c. Quarterly operating reports that compare performance to benchmarks.

d. A biennial performance evaluation that is conducted by workers' compensation industry experts and coordinated by the State Auditor's office. The evaluation is conducted at least every other year and evaluates selected departments to determine whether the agency is providing quality services quickly and cost-effectively. Results of these evaluations are reported to several legislative committees as well as the agency's board of directors and management.

e. An internal audit department that conducts internal audits and compliance reviews and ensures that the departments and programs are properly functioning and operating.

f. A pay-for-performance personnel system that allows each employee and manager through an annual performance review to be held accountable for that person's performance. Goals and benchmarks are integrated into the performance evaluations, and salary increases are based solely on performance.

11. **Job Service North Dakota** - Job Service North Dakota uses outcome measurements that are validated by procedures developed by the federal government.

    Job Service North Dakota has been developing annual plans since 1997. The goals or objectives for the following year guide all areas of the agency. The agency identifies specific strategies that will result in successful implementation of the agency's plan. At the end of each year, the agency evaluates its performance and learns from its successes and from areas that need continued improvement as it develops the plan for the following year.

12. **Secretary of State** - The Secretary of State's office uses both formal and informal methods to monitor its performance, accountability, productivity, and workload. The agency does not have a formal strategic plan currently in place.

13. **Tax Department** - The Tax Department uses indicators to measure its performance. Some indicators are easily quantifiable and measurable while others are more difficult to measure. The Tax Department has a strategic plan and the department continually monitors its effectiveness by examining what it does, how it accomplishes it, why it is being done, and how it can be done better. The committee learned that the Tax Department considers the total cost per $1,000 of revenue collected to be a key measure of the department's performance.

The committee observed that a number of agencies have already developed strategic plans and credible performance measures but the format and reporting varies substantially among the agencies.

State Auditor's Office Performance-Related Audits

North Dakota Century Code Section 54-10-01(4) requires the State Auditor 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.

The State Auditor's office conducts financial statement audits, information systems audits, and performance audits. Two types of performance audits are conducted--operational audits and performance audits. Operational audits are conducted every two years for most state agencies. Performance audits are conducted by the State Auditor's performance audit team consisting of five staff members. Performance audits are comprehensive and indepth audits. The agency completes two or three performance audits each year. Performance audits address a number of objectives, including objectives relating to assessing program effectiveness and results, economy and efficiency, internal control, and compliance with legal or other requirements. The specific objectives for each performance audit vary based on the circumstances for which the audit is selected.

Recent performance audits completed by the State Auditor and presented to the Legislative Audit and Fiscal Review Committee include:

- Service payments for elderly and disabled (SPED) program of the Department of Human Services.
- Workforce Safety and Insurance.
- Job Service North Dakota.
- Veterans Home.
- Child support enforcement program.
- Contracts for services.
- Department of Veterans Affairs.

ConnectND - Performance Reporting Capabilities

The committee learned that the enterprise resource planning system (ConnectND) that is being implemented statewide by PeopleSoft, Inc., includes an enterprise performance management module for compiling and reporting performance measure information.

The committee received information on the use of the PeopleSoft enterprise performance management module for compiling and reporting performance measure data. The committee learned that the system allows the customization of reports for viewing certain performance measure data and identifying whether a measure is on target or not. These reports could be prepared by agencies and provided to legislative committees for review.

Office of Management and Budget - Performance Measure Budget Forms

The committee received testimony from the Office of Management and Budget that it planned to incorporate state agency performance measure data in agency budget requests for the 2005-07 biennium. The Office of Management and Budget reported the performance information requested of agencies would be simple and focused by limiting the information only to the narrative sections of the budget requests. The committee, through the Legislative Council chairman, encouraged the Office of Management and Budget to proceed with including performance-related information in the 2005-07 biennium budget requests. Later in the interim, the committee received information from the Office of Management and Budget on the performance data that was submitted by agencies as part of agency 2005-07 biennium budget requests. The committee learned that 12 agencies submitted performance measures that the Office of Management and Budget described as credible. These agencies were Job Service North Dakota, Labor Department, Highway Patrol, Division of Emergency Management, Department of Commerce, Tax Department, State Library, Parks and Recreation Department, Protection and Advocacy Project, Seed Department, Council on the Arts, and Game and Fish Department. The higher education institutions and the Agricultural Experiment Station and Extension Service were planning to submit performance information at a later date. Five agencies were in the process of developing or updating performance measures and did not include the information and 10 agencies indicated they did not have performance measures. The remaining agencies included measures but the Office of Management and Budget reported that additional data would be needed for the measures to be useful.

The committee reviewed performance information submitted by the following agencies as part of their 2005-07 biennium budget requests:

1. State Library.
2. Tax Department.
3. Protection and Advocacy Project.
4. Job Service North Dakota.
5. Highway Patrol.
6. Parks and Recreation Department.

The committee noted that while a number of the agencies submitted very useful performance information, the format and the type of measures submitted varies among the agencies.

National Studies and Reports

The committee reviewed national reports on government performance and accountability and received testimony from representatives of the National Conference of State Legislatures, the Urban Institute, and private consulting firms regarding "Legislating for Results," a results-based government research project and other performance-based systems, including the "Balanced Scorecard" system of measuring government performance.

"Legislating for Results"

The committee learned that the National Conference of State Legislatures and the Urban Institute began studying state activities relating to results-based government in 1998 and is completing a "Legislating for Results" report to provide guidance for states in developing a performance or outcome-based system of evaluating the effectiveness of government services.

The committee reviewed the key aspects of "Legislating for Results" and learned that the following five key legislative actions are needed for **obtaining** useful outcome information:

1. Legislate a process for regular reporting of results-based information to the Legislative Assembly by each major state program, identifying clearly what the program has accomplished for the state's citizens, not merely what activities the program has undertaken.
2. Provide training in "Legislating for Results" for legislators and legislative staffs.
3. Ask legislative staffs to review in advance the performance information provided by agencies to identify issues for legislative consideration during hearings and other legislative sessions.
4. Seek explanations from agencies for variances on outcomes.
5. Establish a formal process for reviewing the quality of the outcome data. As the data is used for making major funding and programmatic decisions, it becomes necessary for the Legislative Assembly to have confidence in the data.

The report identifies the following six key legislative actions that are necessary for effectively **using** outcome information:

1. Examine outcome information as part of the budget request reviews.
2. Review state programs periodically outside the budget process to identify which services have strong results and which have poor or weak results. This will indicate to agency personnel that the Legislative Assembly is interested in results, not only activities and outputs. This will also encourage agencies and programs to focus on results and how best to deliver services.
3. Review the latest outcome information related to key issues as a basic starting point when developing policies and new authorizations.
4. Require that outcome information be included as a major criteria when establishing performance incentives for agencies and state employees. This will increase accountability of the agencies and employees and encourage them to focus on important service outcomes.
5. Support and encourage agencies to include outcome targets in service contracts and grants. This will increase accountability of contractors and grantees and encourage them to focus on important service outcomes.
6. Include outcome information when communicating with constituents. If possible, obtain from

agencies, service outcome information relating to the constituent's county or city.

"Balanced Scorecard"

The committee reviewed the "Balanced Scorecard" system of measuring government performance. The committee learned that the "Balanced Scorecard" concept involves the development of a program's vision and strategy and the critical success factors to achieve the vision. Key performance indicators measure the agency's progress in achieving its vision. The "Balanced Scorecard" concept:

1. Clarifies and builds consensus on strategic direction.
2. Communicates strategy and measures of success on all levels for staff and citizens.
3. Communicates cause and effect relationships.
4. Aligns behavior and increases the focus on priority initiatives.
5. Provides insight into the achievement of strategic objectives and goals.

Each agency program should have a clear and focused mission. Although programs may measure many outcomes, only 5 to 10 key performance measures should be monitored at the legislative level for each program. Other performance measures should have a cause and effect relationship to the key measures of the program.

Kentucky Review of Performance-Based Budgeting

The committee reviewed a 2001 Kentucky Legislative Research Commission study of performance-based budgeting. Conclusions of the commission include:

1. Legislators must determine whether they want to hold agencies accountable for what they spend or what they achieve.
2. Performance budgeting is a tool that can improve accountability in the use of public resources. To date it has not been a good tool for improving efficiency in the use of public resources.
3. Performance measures should be carefully defined to accurately capture outcomes resulting from program activities.
4. Sufficient technical and staff resources should be devoted to training and maintenance of the system.
5. One of the most difficult aspects of performance budgeting is the definition of agency performance targets that can be reliably measured on a regular basis.
6. Performance measures should be independently validated on a regular basis.
7. Careful planning should limit the number of performance measures to a small set of well-crafted indicators.

National Conference of State Legislatures Review of States' Performance Budgeting

In 2002 the National Conference of State Legislatures reported on the experiences of a number of states that have developed performance budgeting systems. The states involved in the review were Florida, Minnesota, North Carolina, Oregon, and Texas. The report lists the advantages of performance-based budgeting as increased government accountability with more detailed oversight and better targeting of activities to citizens' needs. Disadvantages identified include significant paperwork and increased staffing to collect data, monitor, and report, particularly in states in which systems are not already established.

The report includes recommendations for developing and implementing a performance budgeting system. Major recommendations include:

1. Executive leadership and legislative commitment are essential for the development of performance budgeting. The executive branch must provide central direction and enforce agency commitment, and the legislative branch must be involved in selecting performance indicators and using the performance information in its decisionmaking process.
2. An oversight agency is needed to be responsible for developing agency instructions and performance reports and integrating this information into agency budget requests.
3. Legislators must be involved in selecting performance indicators to ensure that the measures are relevant to legislators' concerns. Performance measures should be linked to appropriations because agencies are more likely to be concerned with good performance when linked to funding levels.
4. Performance measures should be limited to those that are most relevant and best-defined.
5. The identification of unit costs for select programs such as cost per mile of new highway construction provides additional useful information for the legislature to use in its decisionmaking process.
6. Agencies need to specify how funding changes will affect performance results to provide legislators with relevant information for use in decisionmaking.
7. Although attempts have been made to use incentives and disincentives to improve agency performance, adjusting the amount of agency funding as an incentive or disincentive has not been successful.
8. Additional legislative staff may be necessary to assist legislators and state agencies develop, validate, and use performance information. In states in which staff resources have been dedicated to the performance process, including Florida and Texas, the system has been somewhat more successful than in states such as Minnesota and Oregon that have had relatively

few staff members involved in the performance budgeting system.

9. Additional funding may be needed to develop more comprehensive information management systems to facilitate the collection, analysis, and presentation of performance information and its integration with budget requests.
10. Implementation of performance budgeting may take up to four years--18 months for an agency to design and receive approval of its proposed program structure and performance measures from the Governor and the legislature and another 30 months to complete the review of an agency's first-year performance measure results.

Other States' Performance and Accountability Practices

Based on a 2000 National Conference of State Legislatures report, 33 states have approved legislation providing for performance budgeting information. Six states--Florida, Louisiana, Maine, Missouri, New Mexico, and Texas--include performance information in agency appropriation bills. The majority of other states include the performance information in various budget documents available to those states' legislatures.

The committee reviewed performance-related information in other states, including Alaska, Florida, Louisiana, New Mexico, and Texas. The following chart compares legislative and performance information of the selected states to North Dakota:

	North Dakota	Alaska	Florida	Louisiana	New Mexico	Texas
Session	Biennial	Annual	Annual	Annual	Annual	Biennial
Length of session	80 legislative days	121 calendar days (may be extended by 10 days)	60 calendar days (may be extended)	60 legislative days in odd-numbered years, 30 legislative days in even-numbered years	60 legislative days in odd-numbered years, 30 legislative days in even-numbered years[1]	140 calendar days[1]
Number of legislators	House - 94 Senate - 47	House - 40 Senate - 20	House - 120 Senate - 40	House - 105 Senate - 39	House - 70 Senate - 42	House - 150 Senate - 31
Number of legislators on appropriations committee	House - 23 Senate - 14	House - 11 Senate - 7	House - 48 Senate - 16	House - 21 Senate - 12	House - 18 Senate - 10	House - 27 Senate - 15
Number of legislative fiscal analysts	Joint staff - 5	Joint staff - 6 Each legislator has from 2 to 5 personal staff	House - 43 Senate - 29	House - 10 Senate - 6 Joint - 18	Joint staff - 18	Joint staff - 89
Budgeting period	Biennial	Annual	Annual	Annual	Annual	Biennial
Number of appropriation bills	Several	2	1	1	1	1
Approximate appropriations bill(s) length	135 pages	100 pages plus 55-page performance measure bill	369 pages	294 pages	242 pages	1,002 pages
2003 general fund budget	$874 million[2]	$2.1 billion	$20 billion	$6.6 billion	$3.9 billion	$31 billion[2]
Number of performance indicators maintained by agencies	N/A	Unknown	Unknown	5,900	Unknown	7,035
Number of performance indicators considered by legislature	For select agencies - Higher education - 25; Commerce - 25	550	1,000	2,300	1,000	2,200
Location of performance indicators considered by legislature	In select appropriation bills	In a separate bill	In the appropriations bill	In the appropriations bill	In the appropriations bill	In the appropriations bill
Agencies excluded from performance budgeting	N/A	Legislative and judicial branches and higher education	Legislative branch	Legislative branch	None	Legislative branch

[1] Legislative committees meet prior to the legislative session to develop a legislative budget recommendation.
[2] Based on 2001-03 biennial appropriation.

The committee reviewed the structure of performance measurement systems in selected states, statutory provisions providing for the performance measurement systems, examples of appropriation bills, and performance measures for each state. The following is a summary of each state's system.

Alaska

Alaska began its performance measurement system in 1997 and phased it in over a three-year period:

- Year 1 - Mission statements were established for each program of each agency.
- Year 2 - Performance indicators for one-half of the agencies were established.

- Year 3 - Performance indicators for the remaining agencies were established.

By statute, Alaska requires agencies to submit performance measurement information to the legislature. State agencies submit proposed program missions and performance indicators to the legislature prior to each legislative session. Subcommittees of the appropriations committees review the proposed missions and measures as they develop the missions and measures for each agency for the next fiscal year. These missions and measures are included in a separate bill that is approved by the legislature. The Alaska legislature includes approximately 550 measurement indicators in the bill that is approved each year. Agencies are not required to develop a strategic plan as part of performance budgeting.

There is no formal interim reporting of performance measure information to legislative committees in Alaska.

Florida

Florida began its performance measurement system in 1994 and phased it in over a seven-year period. Use of the system is mandated by statute. Agencies are required to include performance information in their budget requests and the Governor is required to submit a performance-based program budget to the legislature.

When implementing the system, the first agencies selected to utilize performance budgeting were agencies that expressed an interest in being involved. In each subsequent year, a mix of large, medium, and small agencies was implemented.

Performance measures are included in each agency's budget request. Actual performance for two previous years, the current year's estimate, and the proposed target for the next year are presented. Key indicators for each agency are included in the appropriations bill and the implementing bill (a bill providing guidance and direction to agencies for implementing their appropriation). The Florida legislature considers approximately 1,000 measures associated with state agency programs. Although not required as part of performance budgeting, agencies in Florida are required to have a long-range strategic plan to guide their activities.

Unless an agency is requested by the legislature to report more frequently, agencies report their performance data annually as part of the agency budget request. Performance data of an agency is audited periodically as part of an agency performance review conducted by the legislature's Office of Program Policy and Government Accountability.

Louisiana

Louisiana began its performance measurement system in 1997. Louisiana phased in components of the system rather than phasing in agencies, requiring all agencies to implement a component of the system at the same time. Louisiana statutes require agency strategic plans and the use of performance-based budgeting.

The components were phased in over three years:

- Year 1 - Program descriptions for each agency were required.
- Year 2 - Key performance indicators, semiannual reporting, and strategic plans were required.
- Year 3 - Key objectives and quarterly reporting were required.

Agencies include proposed objectives and performance measures for the upcoming fiscal year in each agency's annual operational plan that is submitted as part of the agency's budget request. The Governor includes the key objectives and performance measures for each agency in the executive budget recommendation. During the session, the objectives and measures are considered by the appropriations committees and included in the appropriations bill. The Louisiana legislature includes approximately 1,100 objectives and 2,300 performance indicators in its appropriations bill each year. Agencies are required to develop and maintain a five-year strategic plan.

Agencies report quarterly on performance relating to key performance indicators and semiannually relating to supporting indicators. An interim legislative performance review subcommittee meets semiannually to review agency performance. The State Auditor reviews agency performance systems for reliability and validity but does not audit the performance data.

New Mexico

New Mexico began its performance and accountability system in 1999 and is phasing it in over a five-year period. A mix of small, medium, and large agencies began using the system in each of the five years. Performance budgeting is required by statute in New Mexico.

Agencies submit proposed performance measures along with each agency's budget request. Actual performance for two previous years, the current year's estimate, and the proposed target for the next year are presented. Approximately 1,000 performance measures, including output, outcome, efficiency, and quality measures, are included in the appropriations bill. Agencies are not required to prepare strategic plans as part of performance budgeting.

Agencies report actual performance annually as part of the budget request process. Periodically, the legislature has required quarterly reporting. The performance data reported by agencies is not audited.

Texas

Texas began its performance measurement system in 1992, with all agencies implementing the system. Performance budgeting is required by statute.

Texas requires agencies to develop a strategic plan, to include five-year outcome measure projections, and to include performance measures in agency budget requests. The Texas legislature considers output, outcome, efficiency, and explanatory measures as it develops each agency's appropriation, with a total of

approximately 2,200 performance measures included in the appropriations bill.

Agencies submit quarterly reports of actual performance, including an explanation of any variance from the target exceeding 5 percent. The Legislative Budget Board staff prepares budget and performance assessments based on actual agency performance which are provided to all legislators.

The State Auditor's office is responsible for auditing the performance measure information provided by state agencies.

OTHER STATES' TESTIMONY

The committee received testimony from staff and a former legislator representing other states that have developed and implemented a performance and accountability system, including Alaska, New Mexico, and Texas. Major comments and suggestions include:

1. The Legislative Assembly should:
   a. Require use of the system by statute.
   b. Customize the system to accomplish the intended result for North Dakota - Don't duplicate another state's system - Each state is unique.
   c. Keep the system simple initially - It can be refined later.
   d. Agree on a system approach among legislative leadership.
   e. Authorize an agency or committee (legislative or legislative/executive) to oversee development and implementation of the system.
   f. Preplanning is very important to ensure that the system operates as intended and to eliminate changes during implementation which frustrate everyone involved.
   g. Provide adequate and ongoing training at the agency, executive, and legislative levels.
   h. Provide consistent direction for agencies.
   i. Define the data to be measured so everyone understands the result.
   j. Focus on clear, key performance measures.
   k. Use software to gather and report on the data.
   l. Use incentives, benchmarks, and consequences.
   m. Commit to the process for the long term.
   n. Be patient - Implementing the system takes time.
   o. Refrain from having unrealistic expectations about the system - It is a tool to use in decisionmaking - It does not make decisionmaking easier.
   p. Use the data to make policy and funding decisions at the legislative level.
2. A government performance and accountability system:
   a. Empowers legislators to ask the right questions.
   b. Provides useful information (what the agency has accomplished with the state's investment).
   c. Helps legislators focus on policy.
   d. Assists in making appropriation and policy decisions.
   e. Increases public confidence because measures are understandable to the public.
3. Strong legislative leadership, training sessions, and the presentation of outcome-based information to standing committees, in addition to appropriations committees, will assist in acceptance of the system by a majority of the legislature.
4. The development of measures should begin at the agency level because agency directors are much more knowledgeable of their programs and appropriate measurements. The Legislative Assembly needs to be involved in establishing key measures for each program.
5. Many sources exist to assist in the development of outcome measures, including the federal government and other states' programs.
6. Performance measures assist in understanding agency activities but do not provide firm answers to budgeting.
7. Some states use both traditional and program line items in agency appropriations; however, legislators should focus on outcomes rather than line items because outcomes relate more directly to policy. States may appropriate by traditional line item, but the line items should not be the focus of the budget discussion.
8. Agencies should report quarterly on key measures; however, to appropriately manage agency programs, program directors should be measuring substantially more outcomes than those reported to the Legislative Assembly.
9. Establishing a procedure to verify the reliability of the data should be implemented after the outcome-based reporting system has been implemented.

State Agency Testimony

The committee received testimony from state agency representatives regarding the development and implementation of a government performance and accountability system. Significant comments and suggestions included:

1. Measures should:
   a. Be useful to the agency and understandable and important to the Legislative Assembly.
   b. Focus on state policy outcomes.
   c. Add value to decisionmaking.
   d. Be benchmarked against regional or national data.

e. Be consistent and usable.
f. Use existing data sources.
g. Be simple to compile.
h. Be limited in number. Too many measures and objectives for each program are difficult to maintain and evaluate.
i. Be easily communicated to the public.
j. Be flexible and adaptable to a changing environment.
k. Address the effectiveness of a service provided by a number of agencies cooperatively.
l. Be developed with substantial input from agency employees.

2. Reporting that is not compatible with the measures developed should be eliminated.
3. The amount of additional workload that may be required of agency personnel should be considered.
4. For some programs, quality data is available but quantitative or unit-cost data is not available.
5. Some performance information is communicated to the Legislative Assembly during the legislative session, but due to time constraints during a legislative session, this information is generally not the focus of legislative discussions. A more formal process would improve the communication of this information to legislators.
6. Consistent information in agency strategic plans is important.
7. Agencies need adequate resources to develop a strategic plan and associated measures and to collect, analyze, and report performance-related data.
8. Adequate data collection and analysis systems are needed to measure performance and make meaningful decisions regarding resource allocation and program effectiveness.
9. Meaningful performance measures evolve over time and require commitment of management and staff - Patience is essential.
10. Continued monitoring of performance measures by appropriate individuals is essential for the measures to be meaningful and allow an appropriate, proactive response by staff, if necessary.
11. Evaluation of the performance measures on a regular basis ensures the measures are appropriate.
12. Every employee must have a stake in the success of the organization. Rewarding positive performance entices employees to be innovative which moves the organization to higher levels of achievements.

Committee Member Observations

Major comments and suggestions made by committee members include:

1. A review of preliminary performance information indicates the need for a consistent and standardized format for agency reporting of performance information.
2. Additional staff resources may be needed to allow the Legislative Council staff to analyze performance data at the level needed for the Legislative Assembly to adequately review the information.
3. Agencies may have the capability to identify key measurement indicators but may require additional resources to gather the necessary data to provide meaningful information.
4. The Legislative Assembly should focus on reviewing agency performance measures not strategic plans.
5. The system should be simple, understandable, and measurable to provide results that are useful.
6. The University System should utilize the higher education performance reporting system already in place under NDCC Section 15-10-14.2 as it provides performance data.
7. The State Auditor should, as a part of each agency's biennial audit, review select agency performance measures for accuracy, but not complete a comprehensive review of all agency measures.

Government Performance and Accountability System - Implementation Timelines

The committee considered the time period needed for implementing a government performance and accountability system. The committee learned that the timeframe used by most other states that have implemented a similar system ranged from one to seven years. The committee considered implementing a system over two bienniums and received preliminary information from the Office of Management and Budget regarding the agencies that could potentially begin using the system during each of the next two bienniums as follows:

2005-07 Biennium		2007-09 Biennium	
Budget No.	Agency	Budget No.	Agency
112	Information Technology Department	101	Governor
117	State Auditor	108	Secretary of State
127	Tax Department	110	Office of Management and Budget
201	Department of Public Instruction	120	State Treasurer
226	Land Department	125	Attorney General
244	Forest Service	140	Office of Administrative Hearings
250	State Library	190	Retirement and Investment Office
252	School for the Deaf	192	Public Employees Retirement System

2005-07 Biennium		2007-09 Biennium	
Budget No.	Agency	Budget No.	Agency
253	North Dakota Vision Services - School for the Blind	316	Indian Affairs Commission
270	State Board for Career and Technical Education	325	Department of Human Services
301	State Department of Health	401	Insurance Department
313	Veterans Home	405	Industrial Commission
321	Department of Veterans Affairs	406	Labor Commissioner
360	Protection and Advocacy Project	408	Public Service Commission
380	Job Service North Dakota	412	Aeronautics Commission
485	Workforce Safety and Insurance	413	Department of Financial Institutions
504	Highway Patrol	414	Securities Commissioner
601	Department of Commerce	471	Bank of North Dakota
616	State Seed Department	473	Housing Finance Agency
627	Upper Great Plains Transportation Institute	475	Mill and Elevator
628	Branch research centers	512	Division of Emergency Management
630	NDSU Extension Service	530	Department of Corrections and Rehabilitation
638	Northern Crops Institute	540	Adjutant General
640	NDSU Main Research Station	602	Department of Agriculture
649	Agronomy Seed Farm	665	State Fair Association
720	Game and Fish Department	701	State Historical Society
750	Parks and Recreation Department	709	Council on the Arts
801	Department of Transportation	770	State Water Commission

Performance Measure Example

The committee reviewed an example of a possible format for agency reporting of select performance measurement data of the agency as presented by the Legislative Council staff. The example relates to a possible measure for the Department of Corrections and Rehabilitation.

Agency goal - Maintain or reduce the number of inmates.

Agency objective - Reduce the inmate recidivism rate.

Recidivism Rate	2000	2001	2002	2003	2004	2005	2006	2007
Target	17%	17%	16%	15%	15%	14%	14%	13%
Result	19%	18%	17%	16%	15%			

The agency would also provide explanations of the reasons why variances occurred in certain years and, to the extent possible, how the agency's recidivism rate compares to other states' rates or national benchmarks. The establishment of the target would also be established based, to the extent appropriate, on other states or national benchmarks.

Recommendations

The committee recommends House Bill No. 1035 to:

1. Create a government performance and accountability system to be established and maintained by the Office of Management and Budget subject to the input and review of the Government Performance and Accountability Committee. The system is to focus on results of major agency activities and is to provide agency managers, the Governor, the Legislative Assembly, and the public with the information necessary to evaluate and assess agency performance and accountability for the purpose of ensuring that state government services are effective and state resources are used efficiently.
2. Establish a statutory Government Performance and Accountability Committee consisting of up to eight legislators, two citizens, a representative of the Office of Management and Budget, and a representative of the State Auditor's office. The chairman of the committee may also invite up to six additional legislators to participate when committee discussion relates to their legislative standing committee assignments. The committee is to monitor state government performance and accountability by reviewing state agency missions, goals, objectives, strategic plans, and performance measurement data. The committee is also to assess the effectiveness of the government performance and accountability system.
3. Provide that the Legislative Council staff is to assist the committee in performing its duties and responsibilities, including the development of a consistent format for agencies and departments to submit their biennial goals and objectives or strategic plans and performance measurement data, analyzing proposed performance measures prior to committee review, and summarizing performance measurement data for the committee or Legislative Assembly.
4. Provide that the Office of Management and Budget implement the system for executive branch agencies over two bienniums and that initially agencies prepare and present biennial goals and objectives and related performance measurement data for major programs of the agency for the next biennium. Within two years of approval by the Legislative Assembly or the Government Performance and Accountability Committee of an agency's performance

measures, each agency must establish and maintain a three- to five-year strategic plan to guide its operations and activities.

5. Require each agency to prepare an annual performance report summarizing its goals and objectives, including comparisons of performance results to performance targets, explanations of any major variances from performance targets, and multiyear trends in performance.
6. Provide that the State Auditor, as part of each agency's biennial audit, review select agency performance results.
7. Allow for incentives and reviews for agencies based on their performance.
8. Include provisions relating to the legislative and judicial branch participation in the system.
9. Provide for University System participation but in accordance with statutory provisions already in place under NDCC Section 15-10-14.2, which provides for performance and accountability reporting.
10. Require performance measurement data to be included in agency budget requests.
11. Include appropriations totaling $404,859 from the general fund for the 2005-07 biennium for administering the government performance and accountability system. The appropriation includes $200,000 and one full-time equivalent (FTE) position for the Office of Management and Budget, $89,668 and one FTE position for the State Auditor, and $115,191 and one FTE position for the Legislative Council.

The committee also recommends that the Legislative Council chairman invite representatives of the National Conference of State Legislatures and the Urban Institute to conduct performance and accountability training for state agency personnel in North Dakota.

BUDGET MONITORING

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 Government Performance and Accountability Committee was assigned this responsibility for the 2003-04 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. The committee also monitored oil revenues, compliance with legislative intent, and selected special funds.

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 2003-05 biennium. The committee learned that the market price per barrel of oil in August 2004 was $39.65, or $16.88 more than the projected price per barrel of $22.77.

Through August 2004 general fund revenues from oil and gas production taxes were $33.2 million, or $7.5 million more than the March 2003 forecast. General fund revenues from the oil extraction taxes were $18.1 million or $700,000 more than the March 2003 forecast for the same period. The committee learned that the Office of Management and Budget August 2004 revised revenue forecast projects that because oil tax collections are anticipated to be more than originally projected, $16.8 million will be deposited in the permanent oil tax trust fund by the end of the 2003-05 biennium, $16.1 million more than the original estimate.

Agency Compliance With Legislative Intent

The committee received a report from the Legislative Council staff on state agency compliance with legislative intent for the 2003-05 biennium. The report is based on information gathered by the Legislative Council staff during visitations with agency administrators and fiscal personnel in early 2004. 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

The committee reviewed Legislative Council staff reports regarding the status of major appropriations, including state school aid, Department of Human Services programs, and charitable and penal institutions. The following were the key items included in the reports:

1. The Department of Public Instruction current estimate for unspent state school aid funds at the close of the 2003-05 biennium is $1,555,048. This estimate is based on the actual number of weighted student units during the first year of the biennium which was 107,927, or .4 percent less than the original estimate of 108,381 and the original estimate of 106,258 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 $250,000 for providing reimbursements to chief administrators of joint powers agreements.
   b. The next $1 million for providing reorganization bonuses.
   c. Any remaining amount as additional per student payments.
2. The 2003 Legislative Assembly appropriated $51.9 million for teacher compensation payments of $1,000 for first-year teachers and $3,000 for second-year returning teachers. The appropriation anticipated 8,559 returning teachers would qualify for the $3,000 payment and 250 first-year teachers would qualify for the $1,000 payment. Due to changes in the actual number of qualifying personnel, approximately $488,000 in teacher compensation payments is

anticipated to be unspent at the end of the 2003-05 biennium and will be distributed to school districts pursuant to a statutory formula at the end of the biennium.

3. Actual expenditures for the Department of Human Services through August 2004 for the temporary assistance for needy families (TANF) program were $13 million, $1.6 million or 10.9 percent less than estimated expenditures of $14.6 million.
4. Based on actual expenditures through June 2004, the Department of Human Services is estimating total Medicaid expenditures for the biennium will total $931 million, $28.5 million more than the original appropriation estimate of $902.5 million. The 2003-05 biennium general fund share of Medicaid expenditures is projected to be $2.2 million less than the original appropriation due to the enhanced federal matching percentage approved by Congress for a portion of the biennium.
5. Total expenditures at the charitable and penal institutions for the first year of the 2003-05 biennium were $83.2 million, which is $2.2 million or 2.5 percent less than estimated. Total revenues for the period were $27.8 million, which is $3 million or 9.8 percent less than estimated primarily due to revenue shortfalls at the Developmental Center and State Hospital resulting from undesignated general fund budget reductions made by the Legislative Assembly.

HIGHER EDUCATION

The Higher Education Committee was assigned, pursuant to Section 24 of 2003 House Bill No. 1003, a study of higher education to further refine the expectations of the North Dakota University System in meeting the state's needs in the 21st century, the funding methodology needed to meet those expectations and needs, and the accountability system and reporting methodology for the University System.

Committee members were Senators Ray Holmberg (Chairman), Tim Flakoll, Tony S. Grindberg, Ed Kringstad, Elroy N. Lindaas, and Dave Nething and Representatives Ole Aarsvold, Thomas Brusegaard, Bette B. Grande, Kathy Hawken, Nancy Johnson, Frank Klein, Bob Martinson, Eugene Nicholas, Darrell D. Nottestad, and Steven L. Zaiser. Representative Janet Wentz was also a member of the committee until her death on September 15, 2003.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2004. The Council accepted the report for submission to the 59th Legislative Assembly.

BACKGROUND

The North Dakota University System consists of 11 institutions under the control of the State Board of Higher Education. The system served approximately 39,614 students (headcount enrollment) during the 2002-03 academic year, which represents approximately 32,107 full-time equivalent (FTE) students. Total spending provided by the 2003 Legislative Assembly for higher education institutions, including the North Dakota University System office, totaled $472,088,193, of which $361,541,418 was from the general fund, including block grant appropriations to each of the higher education institutions for operations and capital assets and $110,546,775 from special funds, including approximately $107 million for capital improvement projects. The legislative appropriations for the 11 institutions, the North Dakota University System office, and the Forest Service include funding for 2,400.38 FTE general fund positions for the 2003-05 biennium.

PREVIOUS LEGISLATIVE HIGHER EDUCATION STUDIES AND RELATED LEGISLATION

1999-2000 Study

During the 1999-2000 interim, the Higher Education Committee studied higher education funding, including the expectations of the North Dakota 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 North Dakota 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 and private colleges, and the executive branch, discussed shifts, trends, and realities that impact the state of North Dakota and the North Dakota University System and developed expectations for the North Dakota University System, recommendations concerning higher education in North Dakota, and accountability measures and success indicators that correspond with the expectations for the North Dakota University System.

The committee recommended six bills for consideration by the 2001 Legislative Assembly:

1. Senate Bill No. 2037 (2001), which was amended into Senate Bill No. 2003 (2001), provided a continuing appropriation for all funds in higher education institutions' special revenue funds, including tuition income and local funds, and allowed institutions to carry over at the end of the biennium unspent general fund appropriations. The effective date of the legislation was changed to apply through June 30, 2003.
2. Senate Bill No. 2038 (2001), which was amended into Senate Bill No. 2003 (2001), required the budget request for the North Dakota University System to include budget estimates for block grants for a base funding component and for an initiative funding component and a budget estimate for an asset funding component and the requirement that the appropriation for the North Dakota University System 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.
3. Senate Bill No. 2039 (2001), as passed, 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 $385,000.
4. Senate Bill No. 2040 (2001), which failed to pass, would have allowed the North Dakota 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.
5. Senate Bill No. 2041 (2001), as passed, included the committee's recommendation 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.

6. Senate Bill No. 2042 (2001), as passed, included the committee's recommendation 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.

The committee also recommended financial and nonfinancial accountability measurements to be reported annually at the North Dakota University System level.

2001-02 Study

The Higher Education Committee during the 2001-02 interim studied the State Board of Higher Education implementation of the performance and accountability measures report. The committee, through the use of 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 and private colleges, and the executive branch, reviewed plans for and accomplishments relating to the recommendations of the 1999-2000 Higher Education Roundtable, reviewed the state's New Economy Initiative and its linkage to the Higher Education Roundtable cornerstones and recommendations, and developed high-priority action items concerning higher education in North Dakota. The committee also reviewed the North Dakota University System long-term financing plan and resource allocation model approved by the State Board of Higher Education and the North Dakota University System first annual performance and accountability report.

The committee recommended four bills for consideration by the 2003 Legislative Assembly:

1. House Bill No. 1039 (2003), which was amended into House Bill No. 1003 (2003), provided for the continuation of the continuing appropriation authority for higher education institutions' special revenue funding, including tuition. The effective date of the legislation was changed to apply through June 30, 2005.
2. House Bill No. 1040 (2003), which was amended into House Bill No. 1003 (2003), provided for the continuation of the North Dakota University System's authority to carry over at the end of the biennium unspent general fund appropriations. The effective date of the legislation was changed to apply through June 30, 2005.
3. House Bill No. 1041 (2003), which was amended into House Bill No. 1003 (2003), continued the requirement that the budget request for the North Dakota 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 North Dakota University System include block grants for a base funding appropriation and for an initiative funding appropriation and an appropriation for asset funding. The effective date of the legislation was changed to apply through June 30, 2005.
4. House Bill No. 1042 (2003), which failed to pass, would have amended North Dakota Century Code (NDCC) Section 15-10-14.2 to require the North Dakota 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 2003 Legislative Assembly amended House Bill No. 1003 to provide legislative intent that the North Dakota University System performance and accountability report include an executive summary and specific information regarding education excellence, economic development, student access, student affordability, and financial operations.

HIGHER EDUCATION ROUNDTABLE

A Higher Education Roundtable consisting of the 16 members of the Higher Education Committee and 45 representatives from the State Board of Higher Education, business and industry, higher education institutions, including tribal and private colleges, and the executive branch was reconvened during the 2003-04 interim to discuss higher education in North Dakota and recommendations for action by the Legislative Assembly, North Dakota University System, executive branch, and private sector. The North Dakota University System contracted with Mr. Dennis Jones, President, National Center for Higher Education Management Systems, Boulder, Colorado, for consulting services.

The Higher Education Roundtable met on October 21, 2003, to:

1. Review observations relating to the status of higher education in North Dakota.
2. Develop meaningful recommendations for enhancing the economy and other appropriate issues concerning higher education in North Dakota.

Status of Higher Education

The Higher Education Roundtable received information from Governor John Hoeven, Mr. Jones, and a representative of the Western Interstate Commission on Higher Education (WICHE) regarding the status of higher education in North Dakota. The roundtable received reports that the 2001 and 2003 Legislative Assemblies provided the North Dakota University System greater flexibility with corresponding accountability and enacted other provisions improving the state's business climate. The roundtable received testimony that the state's next steps should include the coordination of development efforts between the Department of Commerce, North Dakota University System, and private

sector; the leveraging of research funding to maximize effectiveness; and the commercialization of research to create new products, services, and jobs.

The roundtable learned:

- 84 out of every 100 ninth graders in North Dakota graduate from high school, and 58 out of 100 ninth graders enter postsecondary education.
- North Dakota "imports" approximately 800 post-secondary students each year.
- 44.2 percent of North Dakota's bachelor's degree students graduate within six years, as compared to the national average of 53 percent.
- 30.7 percent of North Dakota's associate degree students graduate within three years, as compared to the national average of 30 percent.
- 25.7 percent of the state's adults aged 25 to 64 have a bachelor's degree or higher, as compared to the national average of 26.5 percent.
- The part-time undergraduate enrollment as a percentage of 25- to 44-year-olds is 3.6 percent, as compared to the national average of 6.2 percent.
- 39.8 percent of employees in North Dakota have a college degree, as compared to the national average of 36.1 percent.
- The state retains approximately 46 percent of system graduates in the state one year after graduation.

The roundtable also learned WICHE's mission is to expand educational access and excellence for all the western region citizens by promoting innovation, cooperation, resource sharing, and sound public policy and thereby strengthening higher education's contributions to the region's social, economic, and civic life. North Dakota participates in WICHE's student exchange programs, including the professional student exchange program, the western undergraduate exchange program, and the western regional graduate program. North Dakota ranks low in state needs-based financial aid and high in tuition levels but ranks high in the share of low-income population participating in higher education.

Task Force Process

The Higher Education Roundtable reconvened six task forces that were similar to those 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 meaningful recommendations for enhancing the economy and other appropriate issues for consideration by the interim Higher Education Committee, North Dakota University System, executive branch, and private sector.

The task forces, chaired by legislative committee members, developed by consensus the following recommendations:

Economic Development Connection

- Continue the strong emphasis on the direct connections and contributions of the North Dakota University System to the economic growth and social vitality of North Dakota.
- Develop a more positive image of the state of North Dakota.
- Continue to assist with business development.

Education Excellence

- Continue to build support for the roundtable, particularly with higher education faculty.
- Recognize the importance of education excellence and that the cornerstones, although numbered 1 through 6, are not priority-ranked.
- Encourage higher education institutions, departments, and programs to establish private sector advisory boards.
- Improve higher education retention and graduation rates through improved college preparation and support for college students.
- Revise the accountability measures relating to education excellence to be more focused.

Flexible and Responsive System

- Anticipate and identify future trends in North Dakota and apply a flexible and proactive approach.
- Facilitate a flexible and responsive system through an internal and external open exchange of information.
- Define a successful North Dakota University System partnership arrangement.

Accessible System

- Enhance the marketing efforts of the North Dakota University System with a focus on the older than average student.
- Develop a seamless preschool through college system, including the review of dual credit courses and affordability.
- Review student financial assistance, including state-funded, needs-based aid, and related student debt.
- Review the impact of increased tuition costs on enrollment.

Funding and Rewards

- Sustain the vision of the roundtable and have the State Board of Higher Education examine how the vision can be carried out through the individual and collective assets of the North Dakota University System.
- Create a culture and provide funding to reward success at the institutional and unit level and to provide incentives as a means of encouraging accomplishment of roundtable objectives, including collaboration. The definition of success needs to be determined at the outset.
- Support the long-term financing plan adopted by the State Board of Higher Education. Any revisions to the plan should be completed in a broader context that examines the balance between state, institutional, and student sources, including the relationship of tuition to needs-based financial aid.

Sustaining the Vision

- Continue the roundtable concept by retaining the structure of the membership and having annual meetings.
- Develop a clear and concise message of the roundtable which explains the goals, objectives, benefits, and impacts of the roundtable.
- Expand communication of the goals, objectives, benefits, and impacts of the roundtable to the:

  General public.

  Legislative Assembly.

  Public and private higher education faculty, staff, and students.

  Kindergarten through grade 12 administration and staff.

  Business community.

  Professional societies.

  Trade associations.

The Higher Education Roundtable also met on June 15, 2004, to:

1. Review the progress made, current status, and further actions needed to enhance the economic and social vitality of the state and make the state more attractive for new business and business expansion.
2. Review the impact of the Higher Education Roundtable on higher education in the state.
3. Review Higher Education Roundtable achievements and remaining challenges for the stakeholders of higher education.
4. Develop recommendations for action by the Legislative Assembly, North Dakota University System, executive branch, and private sector.

Progress Made and Further Actions Needed

The Higher Education Roundtable received information from representatives of the private sector regarding the progress made, current status, and further actions needed to enhance the economic and social vitality of the state and to make the state more attractive for new business and business expansion. The roundtable learned the higher education institutions should work on geographical diversity by increasing recruitment efforts outside the regional area. It is important for the private sector to have access to individuals with good "soft skills" and local access to training for those skills. The state needs to identify specific skills needed by business and industry and ensure that those skills are being taught at higher education institutions. The state should also allow businesses in small communities to utilize the statewide information technology network to receive management and other workforce training.

Impact of the Higher Education Roundtable

The Higher Education Roundtable received information from North Dakota University System higher education institution presidents regarding the impact of the Higher Education Roundtable on higher education in the state. The roundtable learned the state has a better understanding of higher education because of the Higher Education Roundtable. The roundtable has resulted in a common vision for the North Dakota University System, goals and objectives for institution presidents to accomplish, and a higher level of trust between all stakeholders.

Achievements and Remaining Challenges

The Higher Education Roundtable received information from Mr. Jones regarding roundtable achievements and remaining challenges for the stakeholders of higher education and learned:

- The roundtable should have a public agenda that focuses on the future of higher education.
- The state may be losing the urgency relating to the vision of the roundtable. The goals, objectives, benefits, and impacts of the roundtable should be shared with public and private higher education faculty, staff, and students; the business community; and the general public.
- The state's finance policy relating to higher education should be aligned with the roundtable's public agenda.
- The state's accountability mechanism relating to higher education should be aligned with the roundtable's public agenda.
- The state should continue the roundtable concept by having annual meetings.
- The state's higher education institutions are functioning more entrepreneurially; however, the institutions must also function as a system. The flexibility granted to institutions has resulted in the institutions being more competitive, but the institutions must also be more collaborative.

Discussion Group Process

The Higher Education Roundtable convened six discussion groups to develop recommendations for action by the Legislative Assembly, North Dakota University System, executive branch, and private sector.

The discussion groups, chaired by legislative committee members, developed by consensus the following recommendations:

Discussion Group A

- Continue to provide investments in higher education.
- Continue to emphasize the building of trusting relationships.
- Review other states' processes for completing legislative requests for information.
- Integrate the vision of the roundtable to all levels of the North Dakota University System and the general public.
- Review the higher education accountability measures and make changes as necessary.

Discussion Group B

- Conduct an evaluation of the higher education accountability measures to determine the

usefulness of the measures in developing public policy and making campus-level management decisions.

- Continue the roundtable concept by having two meetings each year with a half-day orientation session for new members.
- Identify necessary "soft skills" needed by the private sector and incorporate the teaching of those skills into the curriculum for academic programs.
- Increase the faculty representation on the roundtable by at least including the president of the North Dakota University System Council of College Faculties.

Discussion Group C

- Provide funding to the State Board of Higher Education to encourage and reward collaboration between higher education institutions.
- Provide incentives to students and faculty relating to student internships.
- Continue to promote higher education centers of excellence.
- Allow Work Force 2000 funding to be utilized by employers for providing "soft skills" training to employees.
- Market the benefits of the roundtable to the general public.
- Interface with the federal government when possible.
- Identify necessary "soft skills" needed by the private sector and incorporate the teaching of those skills into the curriculum for academic programs.

Discussion Group D

- Continue the roundtable concept by convening a roundtable meeting before the 2005 legislative session.
- Continue the budgetary flexibility granted to the higher education institutions by the Legislative Assembly.
- Review the higher education accountability measures and make changes as necessary.
- Provide funding to the State Board of Higher Education to encourage and reward collaboration between higher education institutions.
- Conduct a study of the remedial needs of higher education students.
- Allow new or expanding businesses in small communities to access the statewide information technology network for a limited period of time and allow other businesses in small communities to access the network to receive workforce training.
- Develop academic programs that respond quickly to the state's needs.
- Identify necessary "soft skills" needed by the private sector and incorporate the teaching of those skills into the curriculum for academic programs.
- Communicate the results of a survey being conducted by Job Service North Dakota regarding job skills needed by employees.
- Provide higher education funding equal to 21 percent of the total state budget.

Discussion Group E

- Provide assistance to the private sector relating to the accessing of broadband telecommunications services.
- Provide higher education funding equal to 21 percent of the total state budget utilizing the long-term financing plan adopted by the State Board of Higher Education.
- Develop a structured and uniform student internship program through a task force consisting of higher education and private sector members.

Discussion Group F

- Identify necessary "soft skills" needed by the private sector, incorporate the teaching of those skills into the curriculum for academic programs, and inform students of the skills they should possess.
- Develop a uniform student internship program that benefits both students and the private sector.
- Review the higher education accountability measures and make changes as necessary.
- Review the provision of distance education programs by higher education institutions, including the distribution of revenue generated by distance education programs.
- Explain the goals, objectives, benefits, and impacts of the roundtable to potential beneficiaries.

PERFORMANCE AND ACCOUNTABILITY REPORT

North Dakota Century Code Section 15-10-14.2 requires the North Dakota University System to provide an annual performance and accountability report regarding performance and progress toward the goals outlined in the North Dakota University System strategic plan and related accountability measures. Section 18 of House Bill No. 1003 (2003) provides that the performance and accountability report as required by NDCC Section 15-10-14.2 is to 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 12 performance and accountability measures, in addition to the 25 measures required by the 2003 Legislative Assembly, that are to provide guidance in establishing effective policy for the 11 system institutions.

The committee received the North Dakota University System's third annual performance and accountability report in March 2004. The report included information on all the performance and accountability measures required by the 2003 Legislative Assembly and adopted

by the State Board of Higher Education except for employer-reported satisfaction with the preparation of recently hired graduates and employer-reported satisfaction with the system's responsiveness. The committee was informed that information regarding those measures will be included in the 2004 annual report. The committee also learned the University System has started an internal review of the performance and accountability measures and the system anticipates providing meaningful recommendations regarding changes to the performance and accountability measures to the 2005 Legislative Assembly.

The performance and accountability measures and related findings are:

Accountability Measures	Status - Findings
Economic development connection	
Number of businesses and employees in the region receiving training	The number of businesses using North Dakota's workforce training system to provide training for their employees increased 188 percent between fiscal years 2000 and 2003. The number of employees who received training increased 32 percent during the same period.
Levels of satisfaction with training events as reflected in information systematically gathered from employers and employees receiving training	Businesses reported a 99.9 percent average workforce training satisfaction level for fiscal year 2003. Employees reported a satisfaction level of 98.5 percent with workforce training during the same period.
Research expenditures in proportion to the amount of revenue generated by research activity and funding received for research activity	Real dollar research has grown by more than 50 percent during the last four years with $92 million in research expenditures in fiscal year 2003. Research expenditures comprised 17.7 percent of total University System expenditures in fiscal year 2003, compared to 15.2 percent in fiscal year 2000.
Education excellence	
Ratio of faculty and staff to students	The average University System student-to-faculty ratio is 15.9-to-1, ranging from 13.6-to-1 at Minot State University to an average of 16.3-to-1 at the doctoral universities. The average student-to-staff ratio is 12.9-to-1 for the University System, ranging from an average of 11.1-to-1 at the doctoral universities to an average of 19.6-to-1 at the two-year institutions.
Student performance on nationally recognized exams in their major fields compared to the national averages	University System students met or exceeded the national average on most nationally recognized exams for fiscal year 2003.
First-time licensure pass rates compared to other states	University System graduates exceeded the national first-time licensure pass rates for most professions measured for fiscal year 2003.
Student graduation and retention rates	Based on adjusted 2002 graduation rates, 46.9 percent of students who attended University System two-year institutions completed degrees within three years, and 48.2 percent of four-year students completed degrees within six years, compared to the national rates of 29.8 percent and 54 percent, respectively.
Alumni-reported and student-reported satisfaction with preparation in selected major, acquisition of specific skills, and technology knowledge and abilities	For alumni who graduated between July 1999 and June 2000, 74.1 percent reported their current jobs were highly related or moderately related to the most recent degrees they earned, and 82.4 percent reported the institution they attended prepared them at least adequately for their current jobs.
	Based on results of a student satisfaction inventory conducted in October 2002, University System students are generally satisfied with their college experience.
Levels of satisfaction and reasons for noncompletion as reflected in a survey of individuals who have not completed their program or degree	Based on surveys of students who left University System institutions during fall 2002, spring 2003, and fall 2003 semesters, it was determined that most students left because they wanted to attend a different college or university. Other students left because they wanted to move to a new location or because they believed the majors they wanted were not offered at the institution they were attending.
Levels and trends in the number of students achieving goals - Institution meeting the defined needs and goals as expressed by students	At two-year institutions, 49.1 percent of students indicated the intent to earn a two-year degree, and 46.9 percent completed two-year degrees within three years.
	At four-year institutions, 61.2 percent indicated the intent to earn four-year degrees, while 48.2 percent completed four-year degrees within six years.
Percentage of University System graduates obtaining employment appropriate to their education in the state	Approximately 70 percent of the graduates who remain in North Dakota and are employed find full-time employment related to their education or training.
Enrollment in entrepreneurship courses and the number of graduates of entrepreneurship programs	University System institutions offer 45 entrepreneurship courses, two entrepreneurship programs, and one option within a program. In the past year, 862 students enrolled in entrepreneurship courses, and six students graduated from entrepreneurship programs. An additional

Accountability Measures	Status - Findings
	425 participants attended three noncredit seminars that had an entrepreneurial focus.
Equipment expenditure ratio measuring total funds used for equipment replacement as compared to the total inventory value	For fiscal year 2003, the University System ratio of equipment replacement to total equipment inventory was 12.6 percent.
Flexible and responsive system Levels of satisfaction with responsiveness as reflected through responses to evaluations and surveys of graduates and individuals completing programs	More than 85 percent of University System alumni reported overall satisfaction with the quality of instruction at the institution they attended, and 96 percent would recommend the institution to other individuals.
Levels of satisfaction with responsiveness as reflected through responses to evaluations and surveys of companies and employees receiving training	In fiscal year 2003, companies reported a 99.9 percent satisfaction level with responsiveness of the workforce training system in North Dakota.
Biennial report on employee satisfaction relating to the University System and local institutions	University System employees consistently expressed a higher level of employee satisfaction when compared to national survey results.
Accessible system Levels and trends in rates of participation of: • Recent high school graduates and nontraditional students • Individuals pursuing graduate degrees	An increasing number of beginning freshmen and students aged 25 and older are enrolling at University System institutions. The number of students who are enrolled in graduate and professional programs has increased 36 percent during the past five years.
Student enrollment, including: • Total number and trends in full-time, part-time, degree-seeking and non-degree-seeking students being served • The number and trends of individuals, organizations, and agencies served through noncredit activities	University System part-time and full-time degree credit headcount enrollments continue to increase and are currently at an all-time high of 41,620 students. This is in addition to an annual total of 7,166 non-degree-seeking students and 14,904 noncredit students who were served during calendar year 2003.
Number and proportion of enrollments in courses offered by nontraditional methods	During fall 2003, the University System served 7,216 students who enrolled in courses for credit through nontraditional delivery methods. These students comprise 17 percent of the system's total headcount enrollment.
Tuition and fees on a per student basis compared to the regional average	Tuition and required fees at University System institutions for the 2002-03 school year were less than their regional and national counterparts, except at the two-year institutions.
Tuition and fees as a percentage of median North Dakota household income	Tuition and fees at University System institutions for the 2002-03 school year, as a proportion of median household income, were about the same or slightly lower than regional and national averages, except at the two-year institutions.
Levels and trends in partnerships and joint ventures between University System institutions	Institutions are working together to improve access and efficiency throughout North Dakota by creating partnerships in research, service centers, academic programs, and services. Two or more University System institutions have partnered in six centers and three research efforts. In addition to the 35 jointly offered academic programs, University System institutions have formed a collaboration to offer 13 online certificate programs, 17 online two-year programs, and 13 online four-year programs.
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	More than 90 percent of North Dakota residents have access to higher education within 45 minutes of their homes, and almost all North Dakotans have access to higher education through distance-learning opportunities.
Funding and rewards A status report on higher education financing as compared to the long-term financing plan	Based on data for fiscal year 2003, all institutions are funded at less than their operating benchmarks per FTE student. Ten of the 11 institutions exceed their student-share target, while the remaining institution is within .3 percent of its target. University System institutions are funded at an average of 16.1 percent of the Office of Management and Budget capital assets formula and at 5.7 percent of total capital funding needs, including outstanding deferred maintenance.
State general fund appropriation levels for University System institutions compared to peer institutions' general fund appropriation levels	Based on 2001-03 state funding levels, all University System institutions are funded at less than 100 percent of their peer comparator benchmarks and at less than 95 percent of their long-term peer benchmark targets. The institutions, as a whole, are funded at an average of 61.7 percent of their peer comparator benchmarks and 65 percent of their 95 percent benchmarks.
Incentive funding, including the allocation and use of incentive funding	Board initiative funding for the 2001-03 biennium was allocated in support of the objectives identified in the Higher Education Roundtable report.
State general fund appropriation levels and trends as compared to changes in the state's economy and total state general fund appropriations	Changes in total state general fund appropriations, state appropriations for higher education, and personal income appear to track closely to one another. However, changes in gross state product vary significantly from the other three trends.

Accountability Measures	Status - Findings
Per capita general fund appropriations for higher education	In fiscal year 2003, per capita state general fund revenue for higher education was $307.
Cost per student in terms of general fund appropriations and total University System funding	In fiscal year 2003, funding from the state general fund comprised approximately 31 percent of the total unrestricted and restricted revenues for the University System and approximately 45 percent of the total unrestricted revenues. The remaining portion is generated by the institutions.
Administrative, instructional, and other costs per student	In fiscal year 2003, the University System spent a total of $14,914 per student from all funding sources. A majority of the funding was spent in support of instruction, research, and public service.
Percentage of total University System funding used for instruction, research, and public service	In fiscal year 2003, the University System spent 60.3 percent of its total combined revenues and state transfers on instruction, research, and public service.
Percentage of total University System funding used for academic support, student services, and scholarships and fellowships	In fiscal year 2003, the University System spent 15.5 percent of its total combined revenues and state transfers on academic support, student services, and scholarships and fellowships.
Percentage of total University System funding used for institutional support, operations, and maintenance of physical plant	In fiscal year 2003, the University System spent 15 percent of its total combined revenues and state transfers on institutional support, operations, and maintenance of physical plant.
Ratio measuring the funding derived from operating and contributed income compared to total University System funding	In fiscal year 2003, the University System generated 68.5 percent of its total revenues either internally or externally from grants or contributions.
Viability ratio measuring the amount of expendable net assets as compared to the amount of long-term debt	The University System has a debt ratio of .98-to-1 as of the end of fiscal year 2003. Reporting requirements require the University System to include the debt of a related, but separate legal entity. Excluding this debt, the University System would have a favorable debt ratio of 1.24-to-1.
Deferred maintenance ratio measuring the size of the University System's outstanding maintenance as compared to its expendable net assets	For fiscal year 2003, the University System has a favorable average deferred maintenance ratio of .65-to-1, which means the University System would be able to fund total outstanding deferred maintenance needs with total current expendable net assets and have funds remaining for other purposes.
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	Of the major capital projects specifically appropriated and completed during the 2001-03 biennium, all remained within the project budget.

LONG-TERM FINANCING PLAN AND RESOURCE ALLOCATION MODEL

The committee received information regarding the North Dakota University System long-term financing plan and resource allocation model and learned the 1999-2000 Higher Education Roundtable recommended the State Board of Higher Education and the chancellor develop a long-term financing plan and a resource allocation model. As a result, the State Board of Higher Education contracted with the National Center for Higher Education Management Systems for assistance with the development of such a plan and model. The board reviewed the recommendations of the National Center for Higher Education Management Systems and adopted a long-term financing plan consisting of base operating funding, incentive funding, and capital asset funding components.

The committee learned the base operating funding component of the long-term financing plan provides funding to each higher education institution to support core campus functions, such as instruction, research, and public service. The funding for each institution is based on the institution's current state general fund appropriation with general fund appropriation increases to address parity and equity. Objectives of the base operating funding component are:

1. Establish peer comparator institutions for each higher education institution based on agreed-upon selection criteria, including institution type, city size, Carnegie classification code, land grant institution or medical school, total FTE students, total headcount enrollment, a percentage of part-time headcount, degrees awarded, degree program mix, and research expenditures.
2. Review national Integrated Postsecondary Education Data Systems (IPEDS) data on unrestricted state and local appropriations and net tuition revenues (total tuition revenue less scholarships, waivers, and discounts) on a per FTE student basis for each of the peer institutions.
3. Establish a base operating funding benchmark for each higher education institution based on the review of the state and local appropriations and net tuition revenues per student information. The benchmarks are to be reestablished every six years and, in the intervening years, are to be inflated by a percentage amount equivalent to the consumer price index. The base operating fund benchmarks as originally established by the State Board of Higher Education, the benchmarks as reported in the 2003 annual performance and accountability report, and fiscal year

2003 state appropriations and net tuition per FTE student are:

Institution	Original Base Operating Fund Benchmark	Current Base Operating Fund Benchmark[1]	Fiscal Year 2003 State Appropriation and Net Tuition Per FTE Student	Fiscal Year 2003 State Appropriation and Net Tuition as a Percent of the Current Base Operating Fund Benchmark
Bismarck State College	$7,750	$8,560	$6,850	80.0%
Dickinson State College	$7,500	$8,290	$6,590	79.5%
Lake Region State College	$9,250	$10,220	$7,500	73.4%
Mayville State University[2]	$9,000	$9,940	$9,780	98.4%
Minot State University	$8,500	$9,390	$8,000	85.2%
Minot State University - Bottineau	$9,000	$9,940	$7,030	70.7%
North Dakota State University[3]	$10,500	$11,600	$7,450	64.2%
State College of Science	$8,500	$9,390	$9,020	96.1%
University of North Dakota[4]	$13,250	$14,640	$10,480	71.6%
Valley City State University[2]	$9,000	$9,940	$9,600	96.6%
Williston State College	$7,500	$8,290	$7,960	96.0%

NOTE: The State Board of Higher Education analyzes the status of the long-term financing plan by reviewing state appropriations, current base operating fund benchmarks, current FTE enrollment, and the established shared funding percentages. Therefore, the information presented above represents a portion of the items considered in analyzing the long-term financing plan.

[1]The base operating fund benchmarks were originally established by the State Board of Higher Education for 1998-99 data comparisons and have been adjusted for inflation using the annual change in the consumer price index--3.7 percent for June 2000, 3.2 percent for June 2001, 1.1 percent for June 2002, and 2.1 percent for June 2003.

[2]Revenue collected from technology fees has been subtracted from tuition collections.

[3]Funding appropriated for the Higher Education Computer Network (HECN), agriculture extension and experiment, and flood-related expenditures has been deducted from the institution's state appropriation.

[4]Funding appropriated for the HECN, Interactive Video Network, and the On-line Dakota Information Network has been deducted from the institution's state appropriation.

4. Establish shared funding percentages to reflect that higher education funding is to be a shared responsibility among stakeholders. The following is a comparison of the shared funding percentages established by the board and fiscal year 2003 shares:

Institution	Target Funding Shares		Fiscal Year 2003 Funding Shares	
	State Funding Responsibility	Student Funding Responsibility	State Funding Responsibility	Student Funding Responsibility
Bismarck State College	75.0%	25.0%	48.6%	51.4%
Dickinson State University	70.0%	30.0%	56.6%	43.4%
Lake Region State College	75.0%	25.0%	47.4%	52.6%
Mayville State University[1]	70.0%	30.0%	70.3%	29.7%
Minot State University	65.0%	35.0%	57.8%	42.2%
Minot State University - Bottineau	75.0%	25.0%	64.7%	35.3%
North Dakota State University[2]	60.0%	40.0%	49.8%	50.2%
State College of Science	75.0%	25.0%	65.4%	34.6%
University of North Dakota[3]	60.0%	40.0%	54.7%	45.3%
Valley City State University[1]	70.0%	30.0%	69.6%	30.4%
Williston State College	75.0%	25.0%	60.3%	39.7%

[1]Revenue collected from technology fees has been subtracted from tuition collections.

[2]Funding appropriated for the HECN, agriculture extension and experiment, and flood-related expenditures has been deducted from the institution's state appropriation.

[3]Funding appropriated for the HECN, Interactive Video Network, and the On-line Dakota Information Network has been deducted from the institution's state appropriation.

5. Determine the recommended base operating funding levels for each institution by taking into consideration the base operating fund benchmark, enrollment, and the recommended shared funding percentages.
6. Develop budget requests to move institutions currently funded at less than 85 percent of peer institution funding to 85 percent by the 2007-09 biennium and all institutions to 95 percent of peer institution funding by the 2013-15 biennium.
7. Allocate no more than 80 percent of all new state funding to parity or inflation and no less than 20 percent of the new funds to equity. The equity funding is to be distributed on a weighted average of each institution's gap differential to its peer comparator institutions.
8. 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 reevalution of its benchmark.

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, Dickinson

Research Center, North Central Research Center, Williston Research Center, North Dakota Vision Services - School for the Blind, and the Mill and Elevator. The committee received reports regarding the status of the 2003-05 budget, enrollment, current buildings and land utilization; plans for and status of any plant improvements during the 2003-05 biennium and 2005-07 plant improvement needs; and plans for and accomplishments regarding the recommendations of the Higher Education Roundtable. The tour group minutes are available in the Legislative Council office and will be submitted in report form to the Appropriations Committees during the 2005 Legislative Assembly.

COMMITTEE RECOMMENDATIONS

The committee recommends:

- Senate Bill No. 2034 to provide for the continuation of the continuing appropriation authority for higher education institutions' special revenue funds, including tuition, through June 30, 2007.
- Senate Bill No. 2035 to continue the requirement that the budget request for the North Dakota 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 North Dakota University System include block grants for a base funding appropriation and for an initiative funding appropriation and an appropriation for asset funding through June 30, 2007.
- Senate Bill No. 2036 to provide for the continuation of the North Dakota University System's authority to carry over at the end of the biennium unspent general fund appropriations through June 30, 2007.
- Senate Concurrent Resolution No. 4002 directing the Legislative Council to study during the 2005-06 interim, the State Board of Higher Education performance and accountability measures included in the report required by NDCC Section 15-10-14.2.

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 six members of the House of Representatives and five 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 requires the committee 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 acquisitions 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 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 provides that:

- The Information Technology Committee may 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.

North Dakota Century Code Section 54-35-15.4 authorizes the committee to request the State Auditor to conduct an information technology compliance review. The review may consist of an audit of an agency's information technology management, information technology planning, compliance with information technology plans, and compliance with information technology standards and policies or an audit of statewide compliance with specific information technology standards and policies.

The committee was assigned the study of the state's information technology organization and information technology management as provided for in Section 13 of House Bill No. 1505 (2003) and the responsibility for receiving:

- A report from the Chief Information Officer regarding the recommendations of the department's advisory committee regarding major software projects for consideration pursuant to NDCC Section 54-59-02.1.
- 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.
- Periodic reports from the Information Technology Department regarding budgeted and actual information technology equipment and software purchases and estimated savings by funding source pursuant to Section 7 of House Bill No. 1505.
- Information from the Information Technology Department relating to the delivery of consolidated services to agencies and the status of accumulated savings pursuant to Section 12 of House Bill No. 1505.

Committee members were Senators Larry Robinson (Chairman), Randel Christmann, Randy A. Schobinger, Tom Seymour, and Rich Warder; Representatives Eliot Glassheim, Keith Kempenich, Bob Skarphol, Ken Svedjan, Robin Weisz, and Lonny Winrich; 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 2004. The Council accepted the report for submission to the 59th Legislative Assembly.

INFORMATION TECHNOLOGY ORGANIZATIONAL AND INFORMATION TECHNOLOGY MANAGEMENT STUDIES

The committee was assigned the information technology organizational and information technology management studies as provided for in Section 13 of House Bill No. 1505.

The information technology organizational study was to include a review and identification of:

1. The cost and benefits of a centralized and decentralized information technology structure.
2. The cost of providing electronic mail administration, file and print server administration, seat management and desktop personal computer support, mainframe and distributed computing hosting services, consolidated storage management and disaster recovery, and software development.
3. The roles and responsibilities of agency personnel providing information technology services under a centralized and decentralized information technology structure.
4. The employee positions and competencies needed by the Information Technology Department to provide the information technology services on a centralized basis, including the organizational changes required within the department to provide the centralized services.
5. The human resource management issues, including change management, training, and employee compensation, to be addressed for a successful centralization.
6. The adequacy and quality of the services as currently provided and proper performance measures.
7. The comparison of current costs to industry and other states' data.
8. Information technology services appropriate to be performed by individual agencies.
9. A plan to either centralize or decentralize the services identified, including the reorganization tasks, personnel transfers, and the changes required for information technology budgeting and cost allocation processes.

The information technology management study was to include a review of:

1. The technology management processes of other states and private industry with respect to prioritizing state agency information technology budget requests, establishing information technology standards and policies, and overseeing information technology expenditures.
2. The role of other states in providing information technology services to nonstate government entities.
3. The level of information technology outsourcing in other state governments and the private sector and the applicability to the state of North Dakota.
4. The trends that will impact technology deployment and spending in the next 5 to 10 years.
5. The level of coordination in the management of enterprise initiatives, such as the statewide information technology network, the enterprise resource planning system initiative, the geographic information system (GIS) initiative, and the criminal justice information sharing initiative, compared to other states, including a recommendation regarding the appropriate governance structure to provide the maximum benefits to the state.
6. The potential changes to the organizational structure of the Information Technology Department and other state government entities as related to information technology.

Consultant Services and Methodology

Section 13 of House Bill No. 1505 provided a general fund appropriation of $350,000 for the purpose of contracting with consultants to conduct the information technology organizational and information technology management studies and to provide assistance with the preparation of the request for proposals and consultant oversight.

The committee received proposals from three entities interested in providing the committee with assistance in the preparation of the request for proposals, consultant selection, and consultant monitoring for the information technology organizational and management studies. The committee selected and contracted with Techwise Solutions LLC, a consulting company based in Fargo.

The committee, with assistance from Techwise Solutions LLC, released a request for proposals for the information technology organizational and information technology management studies in July 2003. The committee received proposals from four entities interested in conducting the studies, but one of the proposals was excluded because the entity's proposal was too technically focused. The committee received presentations of the proposals from representatives of the three finalists and received information from Techwise Solutions LLC, regarding the finalists. The committee selected and contracted with Pacific Technologies, Inc., a consulting company based in Bellevue, Washington. Pacific Technologies, Inc., began its work in August 2003 and concluded the studies with the presentation of a final report to the Budget Section in January 2004, as required by House Bill No. 1505.

Pacific Technologies, Inc., completed interviews with representatives of state agencies, departments, and institutions; reviewed documentation; assessed information technology organization and labor cost information; reviewed the state's enterprise initiatives; and gathered external benchmarking information.

Study Findings and Recommendations

The Pacific Technologies, Inc., final report for the information technology organizational and management studies included key findings, positive attributes surrounding information technology in the state, information technology labor costs, underlying assumptions, major recommendations, and transition plans.

Key Findings

Pacific Technologies, Inc., identified the following information technology organizational and management key findings:

- The state has a highly fragmented approach to workstation support and help desk services.
- The state has inconsistent standards and policies surrounding workstation platforms, configurations, and replacement.
- The state can achieve additional savings and improve alignment with long-term goals through continued server consolidation efforts.
- The state lacks consistent methods, tools, and performance measures to assess information technology impacts on business operations, prioritize requests for major information technology projects, and evaluate information technology projects.

Positive Attributes of North Dakota Information Technology

Pacific Technologies, Inc., identified the following positive attributes of the state's information technology:

- The state has an indepth understanding of its information technology labor costs and labor distribution.
- The state has a strong commitment to investing in information technology support.
- The state is ahead of most other states on a number of enterprise information technology initiatives.
- The state has made positive, initial strides toward effective information technology governance.

Information Technology Labor Costs

Pacific Technologies, Inc., identified the state's annual information technology labor expenditures to be approximately $26.9 million, of which $13.1 million is at the Information Technology Department and $13.8 million is at the other state agencies. Approximately 50 percent of the state's annual information technology labor expenditures are for application development and maintenance. Pacific Technologies, Inc., recommended the state streamline its application portfolio and refine its approach to information technology project approval processes to significantly impact the application-related labor expenditures.

Underlying Assumptions

Pacific Technologies, Inc., identified the following underlying assumptions that frame their recommendations:

- The state desires to move toward provisioning basic information technology services as a "utility."
- The state wants information technology to be performance-managed at both the agency and enterprise levels.
- The state should adopt best practices when practical.
- The state should favor long-term improvement over short-term considerations.

Major Pacific Technologies, Inc., Recommendations

Pacific Technologies, Inc., presented the following major recommendations and corresponding primary benefits:

Major Recommendations	Primary Benefits
Workstation support and help desk services consolidation - Consolidate all workstation support and help desk services within the Information Technology Department, including: • Initial problem reporting and resolution • Workstation environment maintenance and support • Adds, moves, and changes • Hardware replacement management • Associated performance measurement and management	Positions the state's information technology environment for the long term Allows state agencies to focus on core business needs rather than technical infrastructure Leads to long-term labor cost-savings
Workstation standardization - Move to a highly standardized workstation environment on a statewide basis with the Information Technology Department managing a workstation replacement program	Improves the state's purchasing power and license management Enhances information sharing and staff productivity through common and current workstation tools Promotes the provisioning of basic information technology services as a "utility"
Server consolidation - Continue to consolidate all agency-managed servers into the Information Technology Department	Allows state agencies to focus on core business needs rather than technical infrastructure Promotes the provisioning of basic information technology services as a "utility" Leads to long-term labor and hardware cost-savings
Information technology governance - Improve the existing information technology governance processes by: • Improving the processes and tools for information technology project evaluation • Improving mechanisms to support cost-containment • Developing meaningful statewide management and reporting views of information technology initiatives • Implementing information technology performance measures	Leads to better-informed decisionmaking Provides a more equitable, business-based, and consistent evaluation of information technology initiatives Provides the best opportunity to manage application portfolio costs

Major Recommendations	Primary Benefits
• Establishing an information technology innovation fund	

Workstation support and help desk services consolidation - Pacific Technologies, Inc., recommended the Information Technology Department target a future staffing ratio of 200 workstations per support full-time equivalent (FTE) position, an increase from the current ratio of 149 workstations per support FTE position. Maintaining service quality at the elevated support ratio depends on gaining efficiencies through the use of specialized staff and successful implementation of a standardized workstation environment and associated support tools. If fully implemented, the consolidation of workstation support and help desk services offers potential labor savings of approximately $519,000 per year in total funds; however, the capturing of all the savings would require the elimination of partial FTE positions at the agency level. Pacific Technologies, Inc., recognizes the elimination of partial FTE positions would be difficult due in part to other responsibilities of these employees. A portion of the savings would be offset by annual maintenance costs ranging from $60,000 to $260,000 of total funds and one-time costs for software, hardware, and telephone system upgrades ranging from $160,000 to $1,010,000 of total funds.

Workstation standardization - Pacific Technologies, Inc., recommended the state limit workstations to two or three models (low-end, mid-level, and high-end), tightly control the associated configurations, and allow agencies the option of selecting between a three- to four-year replacement cycle. The Information Technology Department would manage the replacement cycle, including collecting necessary funds from agencies through workstation charges, procuring, configuring, and installing the workstations. The implementation of the standardized workstation environment is critical for the success of the consolidation of workstation support and help desk services. The resulting annual workstation costs would be approximately $2.9 million to $3.7 million in total funds or $30 to $36 per month per workstation, depending on the mix of workstations and the replacement cycles.

The Information Technology Department did release a request for proposal for acquisition of a single brand of workstations for all state agencies and has awarded a contract for desktop and laptop acquisition to Hewlett Packard. Under the contract, agencies will be allowed to purchase workstations directly from the vendor.

Server consolidation - Pacific Technologies, Inc., recommended the Information Technology Department assume the administration of existing agency-managed servers as the servers are replaced and reduce over 150 servers from the state's inventory. As the number of servers are reduced, the Information Technology Department should maintain a 29-to-1 server to support FTE position ratio. The continued server consolidation has the potential annual labor-savings of approximately $162,000 in total funds in addition to significant long-term savings in hardware costs.

Information technology governance - Pacific Technologies, Inc., recommended an information technology project investment review process relating to the evaluation and prioritization of information technology initiatives and an evaluation criteria development process relating to the development of evaluation criteria. The state should develop a set of supporting tools, including business case templates, business plan templates, and an information technology report card, and the state should significantly increase its performance measurement efforts to improve insight into information technology operations and expenditures by implementing performance measurements in the areas of customer satisfaction, financial and management performance, project performance, and consolidation transition performance. Pacific Technologies, Inc., noted the prioritization of proposed major computer software projects by the State Information Technology Advisory Committee is a positive step toward implementing the information technology governance recommendation.

Summary of estimated savings and costs - The following is a summary of the estimated savings and costs of the Pacific Technologies, Inc., recommendations:

Recommendations	Potential Annual Savings (Total Funds)	Recurring Annual Expenditures (Total Funds)	One-time Costs (Total Funds)
Workstation support and help desk services consolidation	$519,000	$60,000 to $260,000	$160,000 to $1,010,000
Workstation standardization	Unknown	$2,950,000 to $3,680,000	$20,000 to $430,000
Server consolidation	$162,000		$0 to $20,000
Information technology governance	Unknown	$200,000 to $340,000	$480,000 to $1,010,000
Total	$681,000	$3,210,000 to $4,280,000	$660,000 to $2,470,000

Transition Plans

Pacific Technologies, Inc., recommended the following transition plans for implementing each of the recommendations:

1. Workstation support and help desk services consolidation - Consolidate all workstation support and help desk services within the Information Technology Department.
   a. Establish a project governance process.
   b. Establish service levels.
   c. Finalize implementation options and costs.
   d. Finalize a funding mechanism.
   e. Develop legislation.
   f. Develop a tactical rollout plan.
   g. Implement consolidated desktop services.
2. Workstation standardization - Move to a highly standardized workstation environment on a statewide basis with the Information Technology Department managing a workstation replacement program.
   a. Establish a project governance process.

b. Inventory hardware and software.
c. Develop workstation options.
d. Define replacement cycles and criteria.
e. Finalize implementation options and costs.
f. Develop legislation.
g. Develop a tactical rollout plan.
h. Implement the rollout plan.

3. Server consolidation - Continue to consolidate all agency-managed servers in the Information Technology Department.
   a. Establish a project governance process.
   b. Develop a preliminary consolidation schedule.
   c. Develop legislation.
   d. Develop a tactical rollout plan.
   e. Implement the rollout plan.
4. Information technology governance - Improve the existing information technology governance processes.
   a. Develop State Information Technology Advisory Committee initial evaluation criteria.
   b. Finalize and communicate the State Information Technology Advisory Committee evaluation process.
   c. Develop information technology innovation guidelines.
   d. Establish statewide information technology business case templates and tools.
   e. Develop baseline, statewide Information Technology Department performance measures.
   f. Develop legislative reporting package templates.

Additional Recommendations

Pacific Technologies, Inc., recommended the following additional recommendations:

- Business application support - Maintain business application support within state agencies.
- Enterprise architecture process - Focus attention on the enterprise architecture process by applying adequate resources and increasing management attention to ensure the process is completed in a timely manner.
- North Dakota University System - Conduct a similar study and review aimed at improving the overall efficiency of information technology expenditures and information technology governance for the North Dakota University System.
- Application cost analysis - Summarize the state's application environment by gathering data on application spending, labor effort, expected life, and asset value.
- Innovation fund - Establish an innovation fund to provide agencies incentives to pilot new technologies that may be useful to the state on a broader basis.

Responses to Pacific Technologies, Inc., Recommendations

The committee received responses regarding the recommendations included in the Pacific Technologies, Inc., final report from Techwise Solutions LLC, Information Technology Department, Agriculture Commissioner, Department of Human Services, Public Service Commission, Department of Corrections and Rehabilitation, Department of Transportation, Land Department, Oil and Gas Division of the Industrial Commission, State Water Commission, and Supreme Court.

Techwise Solutions LLC Response

Techwise Solutions LLC, the committee's consultant manager, supported the recommendations, as appropriate, if the state desires to move toward providing basic information technology services as a "utility." Techwise Solutions LLC agreed with the recommendations to consolidate workstation support and help desk services, standardize the workstation environment, and retain business application support within state agencies. Techwise Solutions LLC suggested the state review its application development environments, data bases, and related tools and the North Dakota University System work with the Information Technology Department to determine if similar efficiencies can be achieved within the North Dakota University System.

Information Technology Department Response

The Information Technology Department supported the recommendations in the Pacific Technologies, Inc., final report. The department instructed a subcommittee of the state's Architecture Review Board, an enterprise architecture team responsible for partnering with the Information Technology Department in setting the future direction of information technology in the state, to review the recommendations in the Pacific Technologies, Inc., final report. The subcommittee completed a review of the recommendations and identified the following next steps:

1. Standardize the specifications for workstations to be used in state government to reduce the total cost of ownership.
2. Prepare and execute a request for proposal to begin aggregated single brand acquisition for workstations.
3. Adopt a four-year replacement cycle for workstations to reduce the total cost of ownership.
4. Continue to study the consolidation of workstation support and help desk services.
5. Continue to study how to best manage the workstation replacement cycle process.

In regard to the standardization and acquisition of workstations, the subcommittee defined four classes of workstations--office automation desktops, power user desktops, mainstream laptops, and power user laptops. The subcommittee estimated state agencies, excluding higher education have approximately 7,700 workstations, of which 5,000 are office automation desktops, 1,300 are power user desktops, 1,000 are mainstream laptops,

and 400 are power user laptops. In July 2004 the department released a request for proposal for acquisition of a single brand of workstations for all state agencies. The department received responses from six vendors--Dell, Gateway, Howard, Hewlett Packard, IBM, and MPC Computers, LLC. After review of the proposals by the Architecture Review Board and the State Information Technology Advisory Committee, the department awarded a contract for desktop and laptop acquisition to Hewlett Packard. The Architecture Review Board has recommended the contract be a mandatory contract for state agencies. The contract would also be available to other entities, including higher education, school districts, and other political subdivisions.

The subcommittee estimated the state spends approximately $4.6 million over two bienniums ($2.3 million per biennium) to replace 4,288, or approximately 85 percent, of its total office automation desktops. Implementing the aggregated procurement contract with a four-year replacement cycle would ensure all office automation workstations are replaced every four years at an estimated cost of $3,325,000, resulting in estimated savings of $1,275,000 over two bienniums. The Office of Management and Budget is working with state agencies to review budget requests for the 2005-07 biennium based on the request for proposal prices, and it appears that a majority of agencies will have sufficient funding in their budgets to support a four-year replacement cycle for office automation desktops using the request for proposal pricing.

The subcommittee is continuing its further study of the consolidation of workstation support and help desk services and the study of how to best manage the workstation replacement cycle process.

Agency Concerns

The committee learned some state agencies have major concerns with the recommendations included in the Pacific Technologies, Inc., final report, including:

- Implementation should proceed cautiously to avoid undoing the significant progress and efficiencies accomplished by many state agencies through an aggressive adoption of information technology applications. (Agriculture Commissioner)
- The recommendations fail to address the specialized high-end needs of scientific and engineering-based agencies. The state's information technology system should include enough flexibility to allow exceptions for agencies with unique or complex, specialized information technology needs. (Public Service Commission)
- Agency loss of control over workstation support could result in increased costs and potential inefficiencies in conducting business if Information Technology Department response times are not as fast as agencies are currently receiving. (State Department of Health)
- Providing workstation support to remote offices is not in place and would need to be developed. (Department of Corrections and Rehabilitation)
- The recommendations lack an analysis from agencies' perspectives related to potential inefficiencies resulting from further centralizing information technology services. (Land Department)
- The recommendations do not recognize the delicate balance that must be maintained between the three branches of government. The state needs to maintain an information technology system that recognizes the equal dignity of the judicial, executive, and legislative branches and the need for the branches to work independently for the good of the state. Consolidation could result in an executive branch agency setting information technology priorities for the legislative and judicial branches. (Supreme Court)

Committee Recommendations

The committee accepted the Pacific Technologies, Inc., final report completed for the information technology organizational and management studies.

INFORMATION TECHNOLOGY FUNCTIONAL CONSOLIDATION

The committee was assigned the responsibility for receiving information from the Information Technology Department relating to the delivery of consolidated information technology services to agencies and the status of accumulated savings pursuant to Section 12 of House Bill No. 1505 (2003).

House Bill No. 1505 provides for the transfer of state information technology employee positions; transfer of accumulated information technology functional consolidation savings to the general fund; and consolidation of information technology services, including electronic mail, file and print server administration, data base administration, storage, application server, and hosting services. The following is a summary of the information technology functional consolidation requirements included in House Bill No. 1505 and the status of the requirements:

Requirements	Status
Transfer of related state agency information technology employee positions - Section 10 provides that on November 1, 2003, 24 FTE positions in 15 state agencies relating to the identified information technology services be transferred to the Information Technology Department. The Information Technology Department was to identify the number of FTE positions required for the consolidated services and make the necessary reductions.	The Information Technology Department established a project executive committee consisting of Mr. Bill Goetz, Chief of Staff, Governor's office; Ms. Pam Sharp, Director, Office of Management and Budget; and Mr. Curtis L. Wolfe, Chief Information Officer, Information Technology Department, for implementing the consolidation of information technology services required by House Bill No. 1505. The project executive committee recommended the transfer of 8.5 FTE positions to the Information Technology Department on November 1, 2003, and the exemption of the remaining 15.5 FTE positions. Of the 15.5 FTE positions exempted, 11 FTE positions

Requirements	Status
	were primarily performing duties not related to the services being consolidated, 2 FTE positions were required for support of the Unisys mainframe at Job Service North Dakota, and 2.5 FTE positions were exempted due to unique agency requirements. The department filled 6 of the 8.5 FTE positions transferred from various agencies and transferred a .5 FTE position to the Office of Management and Budget resulting in a net reduction of 2 FTE positions.
Information technology functional consolidation accumulated savings - Section 11 provides that the Office of Management and Budget and the Information Technology Department shall achieve efficiencies during the 2003-05 biennium relating to the required functional consolidation, and the director of the Office of Management and Budget shall transfer the savings accumulated as a result of these efficiencies in the amount of $1.4 million to the general fund by June 30, 2005.	The department is estimating savings of $438,775 for the 2003-05 biennium, of which $330,429 relates to the 15 agencies identified in Section 10 of House Bill No. 1505 and $108,346 relates to the remaining 29 agencies that are required to participate in the functional consolidation but are not required to transfer FTE positions. The estimated savings have been impacted by the timing of the consolidation, equipment credits provided to agencies for equipment on lease, and funding source restrictions. Pursuant to an Attorney General's opinion, not all funding sources estimated to have savings are able to transfer the savings to the general fund because of restrictions on the use of select special funds. The department estimates approximately one-third, or $146,258, of the savings will be transferred to the general fund by June 30, 2005. The department estimates savings for the 2005-07 biennium of $961,146 from all funds.
Required information technology services - Section 16 provides that each state agency and institution, excluding the legislative and judicial branches, institutions under the control of the State Board of Higher Education, Public Employees Retirement System, Retirement and Investment Office, Attorney General's office, and any entity exempted by the Office of Management and Budget after advisement by the Information Technology Department, shall obtain the identified services through a delivery system established by the Information Technology Department in conjunction with the Office of Management and Budget.	The project executive committee also recommended exemption of the Bank of North Dakota, Housing Finance Agency, State Water Commission, State Fair, Mill and Elevator, North Dakota Vision Services - School for the Blind, School for the Deaf, State Seed Department, and Adjutant General. Seven agencies had consolidated information technology services with the Information Technology Department prior to the passage of House Bill No. 1505, and five agencies were not impacted by the consolidation because they do not have services to transfer to the Information Technology Department. As a result of the consolidation, 170 servers were migrated to the Information Technology Department and the department plans to eliminate 102 servers during the 2003-05 biennium.

Requirements	Status
	The department's help desk has experienced an increase in service calls with the implementation of the consolidation of information technology services. The help desk is to either resolve or assign a call within 10 minutes. The department's goal is for the help desk to resolve 70 percent of the calls received. Those calls not resolved by the help desk are assigned to a technical support position and responded to within 15 minutes of the call. The department is tracking statistics relating to calls resolved and assigned by the help desk, technical support acknowledgment of call, resolve time, and customer notification of resolution.

PRIORITIZATION OF PROPOSED MAJOR COMPUTER SOFTWARE PROJECTS

North Dakota Century Code Section 54-59-02.1 requires the Information Technology Department to appoint an advisory committee for the purposes of prioritizing major computer software projects. The Chief Information Officer is to submit recommendations of the advisory committee regarding major computer software projects to the Information Technology Committee for consideration by the committee and the drafting of appropriate legislation to implement the recommendations.

The committee received information from the Information Technology Department regarding the prioritization of proposed major computer software projects and learned the department assigned the prioritization responsibility to the State Information Technology Advisory Committee, a committee created by NDCC Section 54-59-07 consisting of the Chief Information Officer, chancellor of the North Dakota University System, Attorney General, Secretary of State, Tax Commissioner, Chief Justice of the Supreme Court, two members of the Legislative Assembly, eight members representing state agencies, and two members representing private industry. The State Information Technology Advisory Committee addressed the prioritizing of major projects through information technology portfolio management. Executive branch agencies identified and internally prioritized information technology projects, submitted their information technology budgets into the budget analysis and reporting system, and flagged projects to be ranked by the State Information Technology Advisory Committee. The information technology projects were sorted into three categories--projects over $250,000 requesting funds from the general fund for the investment or the ongoing maintenance costs, projects over $250,000 requesting funds from non-general fund sources for the investment or the ongoing maintenance costs, and projects under $250,000 requesting funds from the general fund for the investment or the ongoing maintenance costs. State agencies self-scored projects

over $250,000 requesting funds from the general fund for the investment or the ongoing maintenance costs based on return on investment, customer service benefits, internal efficiency benefits, operational necessity, and project risk. The Information Technology Department presented a preliminary ranking of these projects to the State Information Technology Advisory Committee for the committee's prioritization.

The State Information Technology Advisory Committee met on September 8, 2004, and prioritized major executive branch computer software projects for the 2005-07 biennium as follows:

	Project	Agency	2005-07 Estimated Cost	
			General Fund Share	Total Cost
1	North Dakota public safety mobile communications	Division of Emergency Management	$3,000,000[1]	$5,700,000[1]
2	Medicaid management information system (MMIS) rewrite	Department of Human Services	$3,667,820	$29,188,159
3	Criminal justice information system	Information Technology Department	$1,000,000	$1,000,000
4	Integrated tax system	Tax Commissioner's office	$12,625,000	$12,625,000
5	Computer-aided dispatch	Division of Emergency Management	$500,000	$500,000
6	Offender management system upgrade (ITAG)	Department of Corrections and Rehabilitation	$375,000	$375,000
7	Mainframe migration	Information Technology Department	$6,300,000	$6,300,000
8	AS/400 migration	Secretary of State	$500,000	$500,000
9	Time and labor	Enterprise Architecture	$700,000	$700,000
10	Enhanced support center	Information Technology Department	$1,000,000	$1,800,000
11	Geographic information system	Information Technology Department	$325,000	$325,000
12	Health Insurance Portability and Accountability Act (HIPAA) project	Department of Human Services	$319,000	$3,190,000

[1]This project also has a $3 million general fund anticipated cost for the 2007-09 biennium.

The Information Technology Department will revise the prioritization to reflect those projects that are funded in the Governor's 2005-07 biennium budget recommendation and will present the prioritization to the Appropriations Committees of the 59th Legislative Assembly (2005). For projects over $250,000 requesting funds from non-general fund sources for the investment or the ongoing maintenance costs and projects under $250,000 requesting funds from the general fund for the investment or the ongoing maintenance costs, the department will prepare a list by agency and priority within agency and provide the list to the State Information Technology Advisory Committee, Office of Management and Budget, and the Appropriations Committees of the Legislative Assembly.

INFORMATION TECHNOLOGY DEPARTMENT BUSINESS PLAN

North Dakota Century Code Section 54-59-06 requires the Information Technology Department to develop and maintain a business plan. Pursuant to that directive the department prepared a strategic business plan for the 2003-05 biennium. The plan includes three goals the department must accomplish to effectively achieve its mission to provide leadership and knowledge to assist customers in achieving their mission through the innovative use of information technology. The following is a summary of the goals and objectives included in the plan:

Goal	Objectives
Define and pursue opportunities for creating, expanding, or eliminating services to maximize the value of the department to government and education	Critically evaluate the value of all the department's services to government and education
	Pursue opportunities to increase the use of existing services offered to customers
	Continue to identify and pursue statewide opportunities for sharing infrastructure and providing new services
	Develop service level objectives for all high-priority services
Manage resources to improve efficiency and reduce cost	Maximize staff productivity by implementing standard procedures for critical operating processes and developing guidelines for managing meetings
	Improve the department's performance management and project management processes and communicate their value to employees and customers
	Maintain competitive rates that are less than or equal to benchmarks and meet federal retained earning requirements
	Hold or reduce costs for hosting and network services while improving service levels
Provide an employee work environment that invites challenge, inspires innovation, fosters pride, and encourages professional growth	Retain the department's knowledge and talent by maintaining a high level of employee satisfaction
	Continue to develop workforce strategies that will support future services
	Maintain a workforce recruitment process that allows the department to hire the best and the brightest in a timely fashion
	Continue to improve upon efforts to recognize and reward employees for their accomplishments
	Provide a fair and equitable work environment for employees

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 report that contains:

- An executive summary that describes and quantifies benefits the state is realizing from investments in information technology.
- A status report on the costs and benefits of large information technology projects completed in the last 12 months.
- A summary of small information technology projects completed in the last 12 months.
- Information on the department's performance, including a rate comparison and an update on the department's performance measures.
- An overview of ongoing information technology initiatives.

The committee learned the department tracks and monitors the cost and the revenue for each service to ensure that a 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 services that generate a majority of the department's total revenue and an update on the department's performance measures:

SOFTWARE DEVELOPMENT

	Systems Analysis	Programming
North Dakota Information Technology Department rates	$56.25 per hour	$52 per hour
South Dakota Bureau of Information Technology rates	$48 per hour	*
Montana Information Technology Services Division rates	Local providers	*
Priority Technologies, Inc.	$86.25 per hour	*
Maximus	Ranges from $125 to $275 per hour	*
Capstone	Ranges from $100 to $140 per hour	*
Inet	Ranges from $60 to $100 per hour	*
K-2	Ranges from $60 to $80 per hour	*
Route 94	Ranges from $60 to $80 per hour	*

*The Information Technology Department is the only provider offering programming services at a rate separate from systems analysis.

TELEPHONE FEES

North Dakota Information Technology Department rates	Telephone line - $21 per device per month Speaker function - $2 per month Display function - $1 per month Voice mail (unlimited) - $3 per month
South Dakota Bureau of Information Technology rates	Telephone line - $11 per device per month* Speaker function - Actual cost Display function - Actual cost Voice mail (unlimited) - $6 per month
Montana Information Technology Services Division rates	Telephone line - $20 per device per month Speaker function - $1 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 (ten-minute limit) - $10 per month
Qwest	$39.88 per month*
Polar Communications	$27.23 per month*
SRT	$28.79 per month*
Consolidated Telcom	$41.06 per month*

*The customers buy their own telephone device.

LONG DISTANCE

North Dakota Information Technology Department rates	In state - $.05 per minute Out of state - $.05 per minute 800 service - $.07 per minute
South Dakota Bureau of Information Technology rates	In state - $.08 per minute Out of state - $.09 per minute 800 service - $.10 per minute
Montana Information Technology Services Division rates	In state - $.105 per minute Out of state - $.105 per minute 800 service - $.10 per minute
Minnesota Department of Administration	In state - $.064 per minute Out of state - $.064 per minute 800 service - $.08 per minute
Nebraska Division of Communications	In state - $.07 per minute Out of state - $.07 per minute 800 service - $.09 per minute
Oklahoma Office of State Finance	In state - $.09 per minute Out of state - $.09 per minute 800 service - $.11 per minute

OTHER CHARGES

Service	North Dakota Information Technology Department Rates	South Dakota Bureau of Information Technology Rates	Montana Information Technology Services Division Rates
Central computer central processing unit (CPU) rates	**Batch CPU** - $.98 per second **CICS CPU** - $.98 per second **ADABAS CPU** - $1.03 per second **TSO CPU** - $.98 per second	**Batch CPU** - $1.53 per second **CICS CPU** - $1.53 per second **ADABAS CPU** - $1.53 per second **TSO CPU** - $1.53 per second	**Batch CPU** - $1.74 per second **CICS CPU** - $.51 per second **ADABAS CPU** - $.99 per second **TSO CPU** - $2.13 per second
Network fees	**Device fee** - $29 per device per month **DSL service** - Actual cost (ranges from $40 to $120) **ATM T-1 service** - $840 per month	**Device fee** - $46 per device per month **DSL service** - $125 per month **ATM T-1 service** - $495 per month **Access fee** - $52 per device per month	**Device fee** - $72.60 per device per month **DSL service** - $250 per month **ATM T-1 service** - $650 per month

PERFORMANCE MEASURES			
Performance Measures	Baseline (Previous Years)	Current Status (June 2004)	Target
Acceptable level of total net assets	2001 - 1.6 2002 - 1.4 2003 - 1.6	1.4	< or = to 2.0
Percentage of Information Technology Department rates reported in annual report that are competitive	2003 - 100%	100%	100%
Total number of customer projects and service requests completed			
Projects	N/A	20,826	Monitor
Service requests	N/A	21,742	Monitor
Customer satisfaction indexes (percentages satisfied or very satisfied) relating to:	2002-2003		
Value	85.3-86.0%	88.1%	90%
Timeliness	94.9-90.2%	91.6%	95%
Quality	94.6-94.2%	92.3%	95%
Knowledge	95.9-96.1%	97.3%	98%
Professionalism and courtesy	98.6-96.9%	97.3%	100%
Employee satisfaction index	2001 - 1.967 2002 - 2.010 2003 - 1.983	1.96	2
Controllable employee turnover	2001 - 4.0% 2002 - 2.4% 2003 - 1.9%	3.2%	4.0-6.0%
Percentage of service levels met	N/A	100%	100%
Percentage of strategic business plan objectives completed or on schedule	2001 - 35% 2002 - 50% 2003 - 65%	72%	70%

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. Information technology policies, standards, and guidelines must be reviewed by the State Information Technology Advisory Committee.

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 standards for information technology procurement, information technology project management, antivirus, and videoconferencing.

The committee learned in June 2004 the Attorney General issued an opinion stating the Information Technology Department is required to follow the administrative rulemaking requirements of NDCC Chapter 28-32 for establishing policies, standards, and guidelines for executive branch agencies with respect to purchasing information technology hardware, software, and services. The opinion states Section 28-32-01(11)(a) exempts a rule concerning only the internal management of an agency which does not directly or substantially affect the substantive or procedural rights or duties of any segment of the public; however, the exception does not apply to the department's policies, standards, and guidelines since the department's policies, standards, and guidelines go beyond the internal management of government and extend to all executive branch agencies and institutions other than those under the control of the State Board of Higher Education. The committee learned the department's policies, standards, and guidelines relating to information technology are developed through an enterprise architecture process and are approved by the Architecture Review Board and the State Information Technology Advisory Committee. The committee also learned 16 other states exempt information technology policies, standards, and guidelines from the administrative rules process.

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 Information Technology Department. The plan must be submitted to the department by July 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 July 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 department regarding information technology plans and learned 63 of the 72 state agencies submitted their information technology plans on or before July 15, 3 were received the following week, 2 were submitted the first week of August, and 4 had yet to submit a plan due in part to the development of cost estimates for major information technology projects. The department will present to the 59th 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; and establish goals and strategies that will serve as a basis for more detailed planning efforts.

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 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 Job Service North Dakota imaging and workflow project, Retirement and Investment Office pension administration system, State Department of Health women, infants, and children management information system project, and Department of Human Services Medicaid management information system. The committee did not recommend the suspension of any project. However, the committee did express concern with respect to the Bank of the North Dakota e-business project.

The committee learned the Bank of North Dakota e-business project consists of the replacement of the Student Loans of North Dakota guarantor and student loan lender information technology systems. The guarantor portion of the project, which was originally scheduled for completion in December 2002, suffered numerous project delays. Due to the project vendor's financial position, the Bank assumed total responsibility for the project and took over physical control of the project's source code. The Bank also completed an analysis of project management "lessons learned" relating to the project and provided the committee with an assessment of the viability of the vendor.

The committee learned through an independent assessment of the e-business project that the delays and cost overruns experienced on the project were caused by assignment of analysis responsibilities to individuals with no experience in analytical work, no proactive risk management of the architecture and the infrastructure, introduction of complex application architecture, failures in the deployment process and infrastructure at critical points in the project, and no ability to automate functional tests.

The Bank of North Dakota used in-house software developers and assistance from the project vendor to complete the guarantor portion of the project in July 2004. The committee learned the new system is demonstrating new real-time functionality, reduction in manual processes, and workflow improvements. Parallel processing and additional system testing between the new system and the legacy system will continue until satisfactory levels of performance are achieved for all areas of the new system. The Bank anticipates shutting down the legacy system at the end of the 2004 calendar year.

The committee learned the Bank of North Dakota is in the process of selecting a consultant to provide assistance with the replacement of the Bank's student loan lender system and the core banking system. The Bank anticipates completing a detailed business case regarding the replacement of the student loan lender system by the end of the 2004 calendar year.

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, 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 has established a school data collection committee to study current data collection requirements and processes. The school data collection committee developed a set of guiding principles relating to the development of new data collection processes and the coordination of existing systems and processes, worked to identify specific cases of duplicate data reporting, began coordinating reporting requirements and processes among data collection systems, and investigated state and federal initiatives that may impact data collection in kindergarten through grade 12 schools. The council also completed a kindergarten through grade 12 educational technology status report and needs assessment that concluded technology is widely used for administrative and educational purposes in North Dakota schools and the statewide information technology network is of high value to schools.

Higher Education Information Technology Initiatives

The committee learned the North Dakota University System prepares an information technology annual plan that summarizes information technology accomplishments and information technology goals. The North Dakota University System collaborates with the Information Technology Department on the statewide information technology network and the implementation of the state's enterprise resource planning system initiative, commonly known as the ConnectND system.

Political Subdivisions

The committee learned the North Dakota League of Cities coordinates with the Information Technology Department on a number of information technology services and the North Dakota Association of Counties has partnered with several state agencies, including the Information Technology Department, to develop automated systems that link state government to specific county agencies.

INFORMATION TECHNOLOGY EQUIPMENT AND SOFTWARE PURCHASES

The committee was assigned the responsibility for receiving periodic reports from the Information Technology Department regarding budgeted and actual information technology equipment and software purchases and estimated savings by funding source pursuant to Section 7 of House Bill No. 1505.

Pursuant to that directive the committee received information from the Information Technology Department and learned the department has contracts for several information technology products and services. The department has awarded a contract to AT&T and Sprint for telephone long distance, resulting in savings of $500,000 per year in total funds; a contract to Western Wireless for cellular telephone service, resulting in savings of $60,000 per year in total funds; and a contract to IBM for hardware maintenance, resulting in savings of $80,000 per year in total funds. The committee did not receive any information from the department regarding savings from information technology equipment and software purchases.

The committee learned the Information Technology Department's information technology procurement responsibilities include the review and approval of agency information technology purchases, development of information technology procurement standards, development of contract and request for proposal templates, and technical assistance with large procurements and request for proposal development. The Information Technology Department completed an information technology procurement standard that was reviewed and approved by the State Information Technology Advisory Committee, the Architecture Review Board, and the department's management. In accordance with the standard, information technology procurements will be reviewed prior to the actual purchase transaction to ensure compliance with information technology standards, consistency with enterprise architecture, conformance to agency information technology plans, and adherence to procurement best practices.

OTHER INFORMATION

Information Technology Department 2003-05 Appropriation Status

The committee received information from the Information Technology Department regarding the department's legislative appropriation for the 2003-05 biennium. The committee learned the department's legislative appropriation for the 2003-05 biennium included a $1 million general fund budget reduction. To address the budget adjustment, the department proposed implementing a one-time miscellaneous billing adjustment for telephone and data processing services to recover $500,000 and $250,000, respectively, and reducing funding for the statewide information technology network by $250,000. Agency information technology budgets were not to be affected by the one-time adjustment because the Information Technology Department lowered telephone and data processing rates for the remainder of the 2003-05 biennium due to savings in those areas. However, in January 2004 the Attorney General issued an opinion stating the department does not have the authority to assess a one-time miscellaneous charge to state agencies. Therefore, the department informed the committee that it was unable to reduce general fund expenditures by $1 million and would be requesting a deficiency appropriation of the 59th Legislative Assembly.

The department's legislative appropriation for the 2003-05 biennium also included $862,059 of special funds from various state agencies. The Office of Management and Budget in consultation with the Attorney General's office determined $70,142 of the $862,059 in special funds may not be transferred to the department because of restrictions on the use of those funds.

As a result of these two issues, the department will be requesting a deficiency appropriation of the 59th Legislative Assembly in the amount of $1,070,000 to address the general fund budget adjustment and the shortfall of special funds. If a deficiency appropriation is not provided, the department indicated it would be forced to make reductions to department FTE positions funded from the general fund, geographic information system initiative, kindergarten through grade 12 portion of the statewide information technology network, Division of Independent Study, Educational Technology Council, EduTech, and Prairie Public Broadcasting.

Enterprise Resource Planning System Initiative - ConnectND System

The committee received periodic reports from the Office of Management and Budget and the North Dakota University System regarding the status of the implementation of the enterprise resource planning system initiative, known as the ConnectND system. The committee learned the Office of Management and Budget issued bonds totaling $20 million in September 2003 for the remainder of the project implementation costs for the ConnectND system. The bonds were issued at an interest rate of 3.9 percent for a period of 10 years with annual debt service of approximately $2.7 million. The estimated debt service amounts are:

Biennium	State Agency Portion	Higher Education Portion
2005-07	$1,563,727	$3,828,436
2007-09	1,565,152	3,831,923
2009-11	1,564,822	3,831,116
2011-13	1,565,033	3,831,633
2013-15	778,257	1,905,387
Total	$7,036,991	$17,228,495

The state agencies' portion of the debt service for the 2005-07 biennium of approximately $1.6 million and the estimated operational cost of the system for the 2005-07 biennium of approximately $1.4 million will be recovered through a $12.58 per month charge to agencies based on FTE positions and a $6.68 per month charge to agencies per $1 million appropriated. These charges will be included in 2005-07 state agency budget requests.

The higher education portion of the debt service for the 2005-07 biennium of approximately $3.8 million and the estimated operational cost of the system for the 2005-07 biennium of approximately $3.5 million will be recovered through various funding sources, including student fees, internal reallocation, reallocation of technology fees, and funding from the 2003-05 operations pool.

The committee learned in January 2004 the Governor directed the ConnectND system to be implemented for state government without a timelag for payroll processing resulting in necessary modifications to the system and a delay in the rollout of the system to state agencies. Due to the extended project timeline, the state also decided to implement the employee expense module. The estimated cost of the necessary modifications and the implementation of the employee expense module is approximately $450,000, which will be paid from Office of Management and Budget carryover funds. The financial and human resource components of the system, except for the employee expense, budget, and strategic sourcing modules are to be rolled out to state agencies beginning on October 1, 2004.

The committee learned the North Dakota University System went "live" with the financial, human resource, and student administration components of the system at Dickinson State University, Lake Region State College, Bismarck State College, Williston State College, and the State College of Science in July 2004. At that time, 8 of the 12 North Dakota University System sites were "live" with the system, considering the pilot sites--Mayville State University, Valley City State University, and the North Dakota University System office--had been "live" since April 2003. The remaining higher education institutions--North Dakota State University, University of North Dakota, Minot State University, and Minot State University - Bottineau--did not go "live" as originally scheduled due to the institutions' concerns with the features offered by the grants and contracts module. However, the remaining higher education institutions did implement the student administration component of the system beginning in fall 2004 for the 2005-06 academic year in a phased approach much like the pilot higher education institutions. After receiving results of a review of modifications necessary to the grants and contract modules, the State Board of Higher Education approved a plan for implementing the financial and human resource components of the system, including the grants and contracts module, at the remaining higher education institutions by January 2005. The University System's anticipated additional one-time and ongoing costs for fiscal year 2005 relating to the modification to the grants and contracts module will be allocated as follows:

Forgiveness from Maximus	$1,250,000
ConnectND budget funds	1,380,000
Higher Education Computer Network operating funds	600,000
State Board of Higher Education contingency funds	250,000
State contingency funds	150,000
Higher education institutions	480,000
Total	$4,110,000

Statewide Information Technology Network

The committee received information from representatives of the Higher Education Committee, the Department of Commerce, the private sector, and telecommunications providers regarding private sector use of the statewide information technology network. The committee learned during the Higher Education Roundtable meeting on June 15, 2004, the roundtable discussed the issue of allowing startup businesses in small communities to access the statewide information technology network for a limited period of time and allow other businesses in small communities to access the network to receive workforce training.

The committee learned the Department of Commerce administers three programs to financially assist businesses and communities in North Dakota--the agriculture products utilization fund, Development Fund, Inc., and community development block grant program. A business could request a loan from the Development Fund for information technology hardware needs, and a community could access funds from the community development block grant program to install broadband connectivity, but there are no programs to assist businesses with the purchasing of broadband Internet services. The committee was informed the main issue appears to be affordability instead of accessibility, and the major reasons making affordability an issue are a perceived cost variance for services between different areas of the state, the true capacity needs of businesses, and the difficulty of budgeting for information technology.

The committee learned that any use of the kindergarten through grade 12 portion of the statewide information technology network for any purpose by private sector entities would constitute a violation of federal e-rate rules and would disqualify the state and the state's schools from receiving e-rate discounts on telecommunications services and Internet access. In relation, the committee learned the Federal Communications Commission suspended the e-rate payment process in August 2004. Due to a change in the accounting structure of the Universal Service Administrative Company, which administers the program, the Federal Communications Commission is unable to issue funding

commitment decision letters to e-rate applicants; therefore, the state has not received any e-rate funds since July 1, 2004. The Information Technology Department and North Dakota schools receive approximately $2.3 million and $2.2 million, respectively, in e-rate funds each year. Dakota Carrier Network and Sprint, which provide wide area network services to kindergarten through grade 12, may need assistance from the state to cover expenses until the e-rate funds are provided to the state.

The committee learned there is a misconception by the private sector regarding the amount of bandwidth needed for videoconferencing. School districts use a T-1 connection for videoconferencing, so private sector entities believe a T-1 connection is required for videoconferencing. However, videoconferencing equipment is available which will work at the various broadband speed levels available from local telecommunications providers.

The committee learned the Information Technology Council of North Dakota is willing to work with the Legislative Assembly and the Department of Commerce to conduct a rural information technology business needs and cost research analysis and to review state funding programs available to subsidize the cost of service and implementation.

The committee learned the state's contract with Dakota Carrier Network for the statewide information technology network expires in June 2006. It will take approximately two and one-half years to plan, bid, and implement a network upgrade that will meet information technology requirements through the year 2013 and beyond. The future network technology will include optical networking, wireless access, virtual private networking, and legacy broadband. The Information Technology Department anticipates issuing a request for proposals relating to the network upgrade in summer 2005 and beginning implementation of the network upgrade in spring 2006.

Future of the State's Server and Operating System Infrastructure

The committee received information from the Information Technology Department regarding the future of the state's server and operating system infrastructure. The committee learned the state operates critical information technology business applications on a wide variety of platforms, provides disaster recovery services to only a limited number of the critical applications, and requires staff with legacy skill sets to support applications. As staff with legacy skill sets retire from the workforce, the department will have to provide in-house training to assure the availability of staff with necessary skills. The future of the state's mainframe applications should be addressed because a majority of the state's essential business functions are dependent on the mainframe, the operation of the mainframe represents the largest opportunity for cost-savings, and as applications are rewritten and transferred to different platforms the cost of operating the remaining mainframe applications increases. There are four alternatives for addressing the future of the state's mainframe:

- Maintain the current mainframe environment.
- Outsource the mainframe environment.
- Rewrite the mainframe applications to operate on another platform.
- Migrate the mainframe applications to another platform.

The following is the Information Technology Department's cost analysis relating to the four identified alternatives for addressing the future of the state's mainframe:

Alternatives	Ongoing Annual Costs
Maintain the mainframe environment - Current costs	$3,790,000
Maintain the mainframe environment - Future costs	$4,030,000[1]
Outsource the mainframe environment	$5,100,000[2]
Migrate the applications to another platform	$1,865,000[3]
Rewrite the applications to operate on another platform	Unknown

[1]Maintaining the current mainframe environment in the future is critically dependent on the availability of trained staff. The estimated ongoing annual costs associated with maintaining the current mainframe environment in the future includes $240,000 for three additional full-time equivalent positions and an associated training program.

[2]Outsourcing the mainframe environment involves utilizing an outside vendor to provide the mainframe environment. The vendor would be responsible for all software, hardware, and labor costs, and the state would be responsible for monitoring service levels. The estimated ongoing annual costs of $5,100,000 includes $4,500,000 for a contract with an outside vendor and $600,000 for expenses associated with network connectivity and service level administration.

[3]Migration involves moving the existing applications from the mainframe to another platform while performing as few changes as possible. Migration would not address the future replacement needs of the legacy systems. One-time costs associated with migrating the state's applications dependent on the mainframe are $6,300,000, and the ongoing annual costs associated with migration are $1,865,000.

The committee learned the migration option could result in a reduction of $1,925,000 in operating costs from current mainframe cost levels and a reduction of $2,165,000 when compared to future mainframe costs. The Information Technology Department is considering asking the 59th Legislative Assembly for authorization to borrow the necessary funding for the one-time migration costs of $6.3 million. Borrowing the necessary funding for the project and repaying the loan with revenue received through the department's rate structure would allow the department to access special and federal funds for the project instead of requesting funding from the general fund for the entire project. The department is in the process of retaining a consultant to assist in the drafting of a request for proposals for migrating from the mainframe. The request for proposals is anticipated to be released on December 30, 2004, and a bid would be awarded by June 30, 2005.

Geographic Information System Initiative

The committee received information from the Information Technology Department regarding the department's geographic information system initiative. The

committee learned the department received a $750,000 general fund appropriation for the 2001-03 biennium and a $678,343 general fund appropriation for the 2003-05 biennium for a GIS coordinator position and for creation of a GIS centralized data hub. The GIS centralized data hub is a data base and web infrastructure hosted by the department for storing and sharing state agency GIS data. Geographic information system data on the hub includes communications, emergency services, geology, political boundaries, state and federal lands, transportation, water resources, and aerial photography. There are 15 state agencies, including over 230 userids, set up for access to the hub. Current GIS initiatives include investigating and adding new aerial photographs, adding new soils data, and working with the Division of Emergency Management on a statewide, high-accuracy road centerlines map. Future GIS plans include continued outreach with counties and cities, new applications, partnering with other levels of government to acquire new data, and additional functionality, including enhanced data download capabilities.

Information Technology Council of North Dakota

The committee received information from representatives of the Information Technology Council of North Dakota regarding benefits resulting from the implementation of the statewide information technology network and future information technology needs. The committee learned the statewide information technology network has encouraged businesses to relocate to North Dakota and the network provides access to university researchers. The Information Technology Council of North Dakota believes the state should sponsor chief information officer conferences, continue to work with economic development centers to attract high-tech businesses, and support an adequate budget for the workforce training quadrants. In order to grow and expand, businesses need more high-tech companies in the state, an improved wireless infrastructure, and better matching of in-state companies to students. The committee also learned school districts' future needs include allowing districts with connectivity issues the option of managing and supporting a Power School server located within a district's network, using partnerships with certified information technology trainers to provide training to statewide school district personnel at a reduced cost, and funding and staffing EduTech at appropriate levels or shifting the focus of EduTech staff to arranging, coordinating, and facilitating training instead of attempting to be the sole providers of training.

Security Assessments

The committee received information regarding whether statutory changes are necessary to authorize the State Auditor to conduct or contract for information technology security assessments of state computer systems. The committee learned the State Auditor does not have specific authority to conduct information technology security assessments. However, the State Auditor plans to request authority from the 59th Assembly to conduct information technology security assessments and has included a funding request of $100,000 for the 2005-07 biennium for such an assessment. Issues relating to confidentiality of the findings of the assessment and the confidentiality of electronic information maintained in the computer system would be addressed.

Information Technology Budget Requests 2005-07 Biennium

The committee received information from the Office of Management and Budget regarding information technology budget requests for the 2005-07 biennium. The committee learned the budget analysis and reporting system implemented for the 2005-07 budget process will include a subsystem for capturing information technology data, including number of workstations, information technology project costs, and information technology expenses. The committee discussed the possibility of having a joint meeting of the Appropriations Committees and the leadership of the 59th Legislative Assembly for an overview of information technology issues for the 2005-07 biennium, including information technology expenses, major information technology projects, and implementation of the Pacific Technologies, Inc., recommendations.

COMMITTEE RECOMMENDATIONS

The committee recommends Senate Bill No. 2037 to:

- Provide that the State Board of Higher Education is responsible for managing and regulating information technology planning and services for institutions under its control; collaborating with the Information Technology Department to coordinate higher education information technology planning with statewide information technology planning; providing advice to the Information Technology Department regarding the development of policies, standards, and guidelines relating to access to or use of wide area network services; and presenting information regarding higher education information technology planning, services, and major projects to the Information Technology Committee.
- Provide that a policy, standard, and guideline, adopted by the Information Technology Department under NDCC Chapter 54-59 primarily intended to affect state agencies and with respect to access to or use of wide area network services, institutions under the control of the State Board of Higher Education, counties, cities, and school districts if the policy, standard, or guideline has been reviewed by the State Technology Advisory Committee, is not considered a rule under the Administrative Agencies Practice Act.
- Revise the powers and duties of the Information Technology Committee and the Information Technology Department, including requiring the

Information Technology Committee to receive and review information relating to major information technology projects of the legislative branch in addition to major information technology projects of the executive and judicial branches.

- Provide that the State Information Technology Advisory Committee is to review policies, standards, and guidelines developed by the Information Technology Department and prioritize proposed major information technology projects for executive branch state agencies, departments, and institutions, excluding institutions under control of the State Board of Higher Education and agencies of the judicial and legislative branches.
- Eliminate the role of the Office of Management and Budget in the development of information technology policies, standards, and guidelines; provide that the Information Technology Department is to develop policies, standards, and guidelines using a process involving advice from state agencies and institutions; and exclude institutions under control of the State Board of Higher Education from having to comply with policies, standards, and guidelines developed by the Information Technology Department.
- Revise the contents of the statewide information technology plan and the Information Technology Department annual report.

The committee also recommends Senate Bill No. 2038 to establish a statewide information technology improvements revolving fund for information technology projects providing improvements in the efficiency of state government services or information technology projects involving multiple state agencies or institutions. A state agency or institution interested in obtaining money from the fund is to submit a written request detailing information on the purpose, scope, cost benefit, and projected return on investment of the project to the Chief Information Officer. The Chief Information Officer presents each request to the State Information Technology Advisory Committee for its consideration. If the committee approves the request, the Chief Information Officer is to recommend the proposed project to the Budget Section for approval. The Chief Information Officer may not provide funds for the project without approval of the Budget Section. Agencies and institutions are to repay funds provided from the statewide information technology improvements revolving fund and any related interest during subsequent bienniums as money becomes available through savings, documented reductions in staff, or increases in revenue attributable to the technology improvements. The Chief Information Officer would report to the Budget Section and the Information Technology Committee on the status, projected return on investment, and actual return to the fund for each project approved by the Budget Section. The bill also appropriates $1 million from the general fund to the Information Technology Department for the purpose of establishing the fund.

JUDICIAL PROCESS COMMITTEE

The Judicial Process Committee was assigned three studies. House Concurrent Resolution No. 3011 directed the Legislative Council to study the North Dakota open records statutes and the appropriateness of the penalties for an unauthorized disclosure of certain records. Section 1 of Senate Bill No. 2379 directed a study of the doctrine of assumption of risk and the impact the reenactment of the doctrine would have on other state laws. Section 1 of House Bill No. 1186 directed a study of the leasing or renting of county court facilities by the state or other political subdivision. 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, Pam Gulleson, Lawrence R. Klemin, and William E. Kretschmar and Senators Dennis Bercier, Michael A. Every, Stanley W. Lyson, Carolyn Nelson, and John T. Traynor.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2004. The Council accepted the report for submission to the 59th Legislative Assembly.

OPEN RECORDS STUDY

The committee was assigned House Concurrent Resolution No. 3011, which directed a study of the North Dakota open records statutes and the appropriateness of the penalties for an unauthorized disclosure of certain records. The testimony received during the hearings on House Concurrent Resolution No. 3011 indicated there is a concern regarding the appropriateness of the penalties for the release of confidential information. Concerns were raised as to whether the penalty for the release of confidential information, a Class C felony, in all cases matches the crime.

Background

In 1957 the North Dakota Legislative Assembly enacted NDCC Section 44-04-18. This section provides, in part, "[e]xcept as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours."

In 1979 a constitutional measure was submitted to and approved by the people of North Dakota. The language of the amendment is codified as Article XI, Section 6, of the Constitution of North Dakota and closely tracks NDCC Section 44-04-18. The constitutional amendment reads as follows:

> Unless otherwise provided by law, all records of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds, or expending public funds, shall be public records, open and accessible for inspection during reasonable office hours.

The purpose behind the open records statute was outlined by the North Dakota Supreme Court in *Grand Forks Herald v. Lyons,* 101 N.W.2d 543, 546 (N.D. 1960), as:

> To provide the public with the right and the means of informing itself of the conduct of the business in which the public has an interest, in order that the citizen and taxpayer might examine public records to determine whether public money is being properly spent, or for the purpose of bringing to the attention of the public irregularities in the handling of public matter.

Agencies Subject to Section 44-04-18

North Dakota Century Code Section 44-04-18(1) provides that North Dakota's open records law applies to records of a "public entity." Section 44-04-17.1(12) defines "public entity" to include public or governmental bodies, boards, bureaus, commissions, or agencies of the state or of any political subdivision of the state and organizations or agencies supported in whole or in part by public funds or expending public funds.

There are also circumstances under which the records of a nongovernmental organization may be open to the public, including whether the organization was created or recognized by state law or by an action of a political subdivision to exercise public authority or perform a governmental function; if the organization is supported by public funds or is expending public funds; and if the organization performs a governmental function or possesses records regarding public business on behalf of a public entity.

Records Subject to Section 44-04-18

North Dakota Century Code Section 44-04-17.1 defines "record" as "recorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded, or reproduced, which is in the possession or custody of a public entity or its agent and which has been received or prepared for use in connection with public business or contains information relating to public business." "Record" does not include unrecorded thought processes or mental impressions but does include preliminary drafts and working papers and does not include records in the possession of a court of this state. Section 44-04-17.1(11) provides that "public business" means "all matters that relate or may forseeably relate in any way to . . . [t]he performance of the public entity's governmental functions, including any matter over which the public entity has supervision, control, jurisdiction, or advisory power; or . . . [t]he public entity's use of public funds."

Exemptions From the Open Records Law

As discussed earlier, NDCC Section 44-04-18 provides "[e]xcept as otherwise specifically provided by law, all records of a public entity are public records, open and accessible for inspection during reasonable office hours." However, certain public records need not be disclosed if they fall within a specific exemption from the open records law. The North Dakota Supreme Court, in *Hovet v. Hebron Public School District*, 419 N.W.2d 189, 191 (N.D. 1988) held:

> [B]ecause the open-records law provides that governmental records are to be open to the public "Except as otherwise specifically provided by law," an exception to the open-records law may not be implied. In order that a record to be excepted from the open-records law the Legislature must specifically address the status of that type of record--e.g., statements that a certain type of record is confidential or that it is not open to the public.

Classifications of Public Records

North Dakota law provides for three classifications of public records. The first class of documents consists of those documents that are subject to the open records law, and the disclosure of these documents is generally required.

North Dakota Century Code Section 44-04-17.1(5) provides for a second class of documents consisting of those documents that are not confidential but are also not subject to the open records law. The disclosure of these exempt documents by a public entity is discretionary. This section provides that an "exempt record" means "all or part of a record . . . that is neither required by law to be open to the public, nor is confidential, but may be open in the discretion of the public entity."

The third class includes those documents that are confidential, the disclosure of which is generally prohibited.

Confidential Records

North Dakota Century Code Section 44-04-17.1(3) provides that "confidential records" means "all or part of a record . . . that is either expressly declared confidential or is prohibited from being open to the public." A public entity generally has no discretion regarding the disclosure of a confidential record and a public release of a confidential record. Confidential records are characterized by a lack of discretion to disclose documents to the public, and the public servant who releases the confidential records generally can be punished.

The disclosure of confidential information is prohibited by NDCC Section 12.1-13-01, which provides in part that "[a] person is guilty of a class C felony if, in knowing violation of a statutory duty imposed on him as a public servant, he discloses any confidential information which he has acquired as a public servant."

Records do not need to be expressly declared confidential for their disclosure to be prohibited by NDCC Section 12.1-13-01. Section 12.1-13-01 defines "confidential information" as "information made available to the government under a governmental assurance of confidence as provided by statute." The Attorney General in an August 1, 1994, opinion stated that this definition includes not only those documents that a statute specifically states are confidential, but also those which a statute provides cannot be disclosed or for which the Legislative Assembly has provided a penalty for disclosure.

Conflicting Penalties for the Disclosure of Confidential Information

As discussed above, NDCC Section 12.1-13-01 provides a person who knowingly discloses confidential information is guilty of a Class C felony. There are, however, several sections throughout the Century Code which provide a specific penalty for the disclosure of confidential information. Three examples of these sections are:

- Section 4-18.1-14, which relates to the Milk Stabilization Board, provides that the disclosure of confidential information is a Class A misdemeanor,
- Section 50-19-10 provides that the records of maternity homes are confidential. Section 50-19-15 provides that a violation of Chapter 50-19 is a Class B misdemeanor, and
- Section 50-25.1-14, which relates to child abuse and neglect records, provides that any person who permits or encourages the unauthorized disclosure of confidential information under Chapter 50-25.1 is guilty of a Class B misdemeanor.

Health Insurance Portability and Accountability Act of 1996

The privacy provisions of the federal law, the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Pub. L. 104-191, apply to health information created or maintained by health care providers who engage in certain electronic transactions, health plans, and health care clearinghouses. Congress called on the Department of Health and Human Services to issue patient privacy protections as part of HIPAA. The Department of Health and Human Services issued the regulation "Standards for Privacy of Individually Identifiable Health Information," which is applicable to entities covered by HIPAA. The regulation covers health plans, health care clearinghouses, and those health care providers who conduct certain financial and administrative transactions electronically. Most health insurers, pharmacies, doctors, and other health care providers were required to comply with these federal standards beginning April 14, 2003.

These federal privacy standards do not affect state laws that provide additional privacy protections for patients. The confidentiality protections are cumulative; the privacy rule sets a national "floor" of privacy standards. Any state law providing additional protections will

continue to apply. When a state law requires a certain disclosure--such as reporting an infectious disease outbreak to the public health authorities--the federal privacy regulations would not preempt the state law.

Congress provided that for civil violations of the standards, the Office for Civil Rights may impose monetary penalties up to $100 per violation, up to $25,000 per year, for each requirement or prohibition violated. Criminal penalties apply for certain actions, such as knowingly obtaining protected health information in violation of the law. Criminal penalties range up to $50,000 and one year in prison for certain offenses; up to $100,000 and up to five years in prison if the offenses are committed under "false pretenses"; and up to $250,000 and up to 10 years in prison if the offenses are committed with the intent to sell, transfer, or use protected health information for commercial advantage, personal gain, or malicious harm.

In an October 4, 2002, letter opinion, the Attorney General responded to an inquiry about the confidentiality of information regarding a public employee's participation in uniform group health insurance coverage. According to the opinion, "even if state law did not make information on an employee's participation and the amount paid for that participation confidential, HIPAA and the rules adopted under HIPAA would make information concerning an employee's participation in the health, vision, dental, and EAP programs and the payment for that participation confidential under federal law beginning April 14, 2003." According to the opinion, 45 C.F.R., § 164.502, states that a "covered entity may not use or disclose protected health information" except in certain circumstances. In the opinion of the Attorney General, for purposes of this regulation, Public Employees Retirement System's health insurance plans are covered entities. Thus, according to the opinion, in light of the regulations adopted pursuant to HIPAA, information on an employee's participation and the amount paid for that participation is confidential.

The 58th Legislative Assembly (2003) enacted a number of bills intended to ensure compliance with HIPAA requirements.

Examples of Exempt or Confidential Records

There is a full range of types of records that are specifically excepted from the state's open records law. The specific exceptions include exempt records, which are authorized to be released at the discretion of the agency, and confidential records, which may not be released and for which the penalty for release is a Class C felony. Examples of these records include certain law enforcement records; attorney work product; trade secrets, proprietary, commercial, and financial information; economic development records; minutes and recordings of executive sessions; personal medical and health records; student records; reports of child abuse or neglect; disease control records; motor vehicle records; state agency risk management and loss control records; multistate investigations and litigation; lists of children; computer programs; financial account numbers; personal information of licensed professionals; consumer complaint information; inmates' records; and legislative records and information.

Testimony and Committee Considerations

The committee received extensive testimony and information from the Attorney General's office and other government agencies that deal with confidential records' issues on a regular basis. The committee's consideration centered on two issues--concerns about the appropriateness of penalties for the disclosure of confidential records and the policies of state agencies and the judicial branch regarding confidential information.

Concerns About the Appropriateness of Penalties for the Disclosure of Confidential Records

The committee received testimony that the purpose of the study is to review the penalties imposed for the release of confidential information. According to the testimony, there is a concern about the release of information that had previously been public information, such as whether legislators participate in the state health plan. The testimony indicated that the issue before the committee was not whether any records should be open or closed, as those determinations have been made by the Legislative Assembly, but rather whether the severity of the penalty for the release of information such as participation in the state health plan is appropriate for the offense. It was noted that although some information that has traditionally been open to the public and often has been provided, particularly during election season, it would now be a Class C felony for someone with that information, such as a member of the Legislative Council staff, to knowingly provide that information. According to the testimony, the problem is not whether anyone is being prosecuted for these potential felonies, such as disclosing someone's age or the fact an employee participates in the state's flexcomp program, but rather whether a Class C felony is the appropriate penalty for that offense.

The committee also received testimony from the Attorney General's office regarding the appropriateness of penalties for the disclosure of confidential information. According to the testimony, the Attorney General's office receives few complaints or concerns about the penalties for a "knowing" violation of the confidential records laws. A representative of the Attorney General's office said public servants are very conservative when it comes to releasing confidential information and the penalties currently in place act as a deterrent.

The testimony indicated that the Attorney General issued 22 opinions in 2003 which dealt with open records or open meetings. The testimony indicated that many of the calls received regarding open records or open meetings are handled informally. It was noted that often when it is explained to a caller that a certain record is an open record, the agency will release the record. According to the testimony, some callers want the explanation in writing while others want the violation recorded in order to create a record of repeat violations. The testimony indicated that the Attorney General's office provides

training to various agencies and organizations regarding the state's open records laws. The Attorney General's office also provides other sources of open records and open meetings information such as brochures, manuals, and online information.

The committee also received testimony regarding the impact of HIPAA on the state's open records laws. According to the testimony, there are a number of state and federal laws that provide for civil and criminal penalties for the release of confidential information. The Act contains provisions that provide for defenses or limitations for imposing penalties. The Act provides that if a party does not know or after exercising reasonable diligence was unaware that the party's actions were in violation of the privacy rules, there are steps the party can take to be excused from paying the civil penalty. Under HIPAA, no penalty may be imposed if the failure to comply was not willful neglect. The Act allows for a correction of a violation if the mistake is corrected within 30 days. The Act also allows for extensions and allows for an agency to ask the Department of Health and Human Services for technical assistance to come into compliance with HIPAA.

The opinion was expressed that because the Class C felony for the release of confidential information acts as a deterrent, the general penalty should not be changed. It was recommended, however, that the Legislative Assembly may want to take the approach to debate the penalty provisions for new confidential provisions that may be proposed rather than revisit the penalty provisions already in place. The opinion was expressed that the reason there have not been more prosecutions for the release of confidential information is because the penalty has served as a deterrent and not because the penalty is too severe that no one is being prosecuted. It also was noted that the grading of penalties would be difficult. According to the testimony, private information may mean different things to different people. It was noted there have been more instances in which public entities have refused to release information that is open than there have been instances in which public entities have released confidential information. It was speculated that prosecutions for the release of confidential information may not be a priority for prosecutors.

The committee also received testimony regarding the penalties of other states for the release of certain information. The information compared the penalties of North Dakota with those of Minnesota, South Dakota, Nebraska, Iowa, and Wisconsin. The information indicated that the penalties in these states for the release of information relating to a state employee's or official's participation in the state's health insurance, flexcomp program, or retirement program ranged from no penalty to a simple misdemeanor. Several states provided for civil remedies in the form of an injunction or damages, but none of the neighboring states make disclosure of this kind of information a felony, which is the law in North Dakota.

Policies of State Agencies and the Judicial Branch Regarding Confidential Information

The committee received testimony from the Department of Human Services, Department of Transportation, and Game and Fish Department regarding each agency's protocol for handling and releasing confidential information. The committee also received testimony from the Supreme Court regarding the open records policies of the state's judicial branch.

According to the Department of Human Services, state and federal laws and regulations prohibit the department from releasing records unless certain conditions are met. State law makes confidential all department records regarding clients or applicants. Federal law and regulations further restrict the disclosure of substance abuse treatment records. Department of Human Services employees attend training sessions regarding the release of information and employees are advised of the penalties for the release of confidential information. It was noted the department's policy on the release of confidential information is very restrictive. According to the testimony, confidential client records may be released under certain circumstances, such as client consent, records used for a civil commitment proceeding, or by court order. North Dakota Century Code Section 50-06-15 makes it a Class A misdemeanor for the Department of Human Services to disclose confidential information.

A representative of the Department of Transportation presented testimony that the department starts with the premise that the department's records are open. Any release of information is based upon statute. According to the testimony, most information regarding driver's license and vehicle registration is open. Driver's license pictures, which are now digitized, are not open records. It was noted that except for when a driver's record is requested by a court or by law enforcement, the driver is notified of requests made for information. The testimony indicated that the department no longer sells mailing lists and that the department tends to err on the side of not releasing information.

The testimony of the Game and Fish Department indicated that state law requires the use of Social Security numbers on all game and fish licenses. The law was passed at the request of the Department of Human Services as part of that department's child support enforcement efforts. The law provides that individuals who are in arrears on child support payments are denied participation in hunting license lotteries. According to the testimony, the department is required to collect Social Security numbers from customers but has taken steps to minimize misuse of the numbers. It was noted that the department does not include the Social Security number in any request for open records information and does not print Social Security numbers on any hunter lists or on any license tags.

According to a representative of the Supreme Court, North Dakota Supreme Court Administrative Rule 41 provides for the open records policy for the state's courts. The policy operates on the presumption that judicial records are generally open to the public for

examination, inspection, and copying. The rule provides for procedures for identifying certain records as exempt from disclosure. The rule also provides for a procedure for sealing records. A party may petition the court to have a record or a portion of a record sealed. It was noted that only a judge can seal a court record. The record may be sealed based upon a motion of a party, or the court may make the decision to seal a record on its own accord. According to the testimony, the Supreme Court is in the process of revising Rule 41 to make certain information in court records, such as Social Security numbers and credit card numbers, confidential.

Several committee members expressed concern that there are a number of sections in the North Dakota Century Code which provide for a penalty that is different from the general penalty in Section 12.1-13-01, a Class C felony. For example, Section 50-06-15 makes it a Class A misdemeanor for the Department of Human Services to release confidential information. The committee considered a bill draft that makes the penalty for the release of any confidential information a Class C felony for all instances throughout the North Dakota Century Code.

Recommendations

The committee recommends House Bill No. 1036 to make the penalty for the release of any confidential information a Class C felony consistent throughout the North Dakota Century Code by changing those sections of the Century Code which provide for a penalty that is different from the general penalty contained in Section 12.1-13-01.

ASSUMPTION OF RISK STUDY

The committee was assigned Section 1 of Senate Bill No. 2379, which directed a study of the doctrine of assumption of risk and the impact the reenactment of the doctrine would have on other state laws. Senate Bill No. 2379, as introduced, would have reintroduced the doctrine of assumption of risk into the state's doctrine of modified comparative fault. Testimony in opposition to the introduced bill indicated that the modified comparative fault standard under which the state currently operates is an equitable process. According to the testimony, the bill would result in a regression of 30 years of tort law. The testimony contended that the bill would operate to preclude recovery if a jury determines that the injured party is responsible even in a minuscule amount and that defendants would raise "assumption of risk" in every case as an attempt to completely bar recovery. By amendment the Senate replaced the substantive provisions of the bill with the provision directing this study.

Background

The doctrine of assumption of risk is a common-law theory that a plaintiff may not recover for an injury to which the plaintiff has consented. Under the doctrine, a plaintiff is barred from recovering under a theory of negligence if it is proven that, with appreciation and knowledge of an oblivious danger, the plaintiff purposely elects to abandon a position of relative safety and chooses to reposition that person in the place of obvious danger and by reason of that repositioning is injured. According to *Black's Law Dictionary,* the requirements for the defense of assumption of risk are that: (1) the plaintiff has knowledge of facts constituting a dangerous condition, (2) the plaintiff knows the condition is dangerous, (3) the plaintiff appreciates the nature or extent of the danger, and (4) the plaintiff voluntarily exposes oneself to the danger.

Assumption of risk is an affirmative defense that must be pleaded and proven by the defendant. If the defendant would otherwise be subject to liability to the plaintiff, the burden of proof of the plaintiff's assumption of risk is upon the defendant. Generally, the question whether a party has assumed a risk is a determination to be made by a jury.

The defense of assumption of risk as a total bar to recovery has been abandoned in a number of jurisdictions, including New Mexico, Kentucky, New Hampshire, Pennsylvania, and Texas. In a number of other jurisdictions, including North Dakota, Alaska, Arizona, Arkansas, Colorado, Connecticut, Idaho, Iowa, Kansas, Massachusetts, Minnesota, Missouri, Montana, New York, Oregon, Utah, and Washington, the doctrine of assumption of risk is used to reduce a plaintiff's recovery rather than serving as a total bar to recovery. Other states have eliminated assumption of risk as a defense in particular actions, such as employer-employee suits and automobile-guest cases.

North Dakota Law

History

In 1973 the Legislative Assembly adopted the doctrine of comparative negligence. As a result of this legislation, the North Dakota Supreme Court, in *Wentz v. Deseth,* 221 N.W.2d 101 (N.D. 1974), held that the affirmative defense of assumption of risk was no longer the law of North Dakota. The 1973 legislation, which was codified as NDCC Section 9-10-07, provided:

> **Comparative negligence.** Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or in injury to person or property, if such negligence was not as great as the negligence of the person against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person recovering. The court may, and when requested by either party shall, direct the jury to find separate special verdicts determining the amount of damages and the percentage of negligence attributable to each party; and the court shall then reduce the amount of such damages in proportion to the amount of negligence attributable to the person recovering. When there are two or more persons

who are jointly liable, contributions to awards shall be in proportion to the percentage of negligence attributable to each; provided, however, that each shall remain jointly and severally liable for the whole award. Upon the request of any party, this section shall be read by the court to the jury and the attorneys representing the parties may comment to the jury regarding this section.

This section was suspended in 1987 and repealed in 1993.

Current Law

In 1987 the Legislative Assembly passed House Bill No. 1571, which significantly revised tort liability law in this state. The legislation, codified as NDCC Chapter 32-03.2, shifted the focus for determining tort liability from traditional doctrinal labels to the singular inclusive concept of "fault." Section 32-03.2-02 includes not only negligence but also malpractice, absolute liability, dram shop liability, failure to warn, reckless or willful conduct, assumption of risk, misuse of product, failure to avoid injury, and product liability within the definition of "fault" to be compared in an action for damages.

Under NDCC Section 32-03.2-02, the state has adopted modified comparative fault. Modified comparative fault means that contributory fault does not bar recovery in an action by any person to recover damages for death or injury to persons or property unless the fault was as great as the combined fault of all the persons who contributed to the injury. In other words, a claim is not barred unless a person is 51 percent at fault. The damages allowed are reduced by the proportion of contributing fault of the person recovering.

Under NDCC Section 32-03.2-02.1, notwithstanding modified comparative fault, in an action to recover damages for injury to property, the damages may not be reduced by contributing fault if three conditions are met. The party must be seeking damages as a result of a two-party motor vehicle accident, the direct physical property damages sought are not more than $5,000 and the indirect damages do not exceed $1,000, and the percentage of fault of the person against whom recovery is sought is over 50 percent.

North Dakota law also contains several instances in which the assumption of risk defense is specifically prohibited. For example, in the area of workers' compensation law, NDCC Section 65-09-02 provides, in part:

> An employee whose employer is in violation of section 65-04-33, who has been injured in the course of employment, or the employee's dependents or legal representatives in case death has ensued, may file an application with the organization for an award of compensation under this title and in addition may maintain a civil action against the employer for damages resulting from the injury or death. **In the action, the employer may not assert the common-law defenses of:**
>
> 1. The fellow servant rule.
> 2. **Assumption of risk.**
> 3. Contributory negligence.

In the area of railroad corporation liability, NDCC Section 49-16-04, provides, in part, that "[i]n any action brought against any railroad corporation . . . to recover damages for injuries to, or death of, any of its employees, such employee shall not be held to have assumed the risk of the employee's employment in any case where the violation by such railroad corporation of any state or federal statute enacted for the safety of employees contributed to the injury or death of such employee." In addition, Section 49-16-08 provides that "[a]ny employee of a railroad corporation who, while in the performance of the employee's duty and while engaged in any commerce subject to the regulative power of this title, may be injured or killed by any locomotive, car, structure, or obstruction used or retained contrary to the provisions of this title, shall not be deemed to have assumed the risk . . . ."

Testimony and Committee Considerations

The committee received testimony and reviewed information from the Insurance Department, State Bar Association of North Dakota, North Dakota Trial Lawyers' Association, attorneys, representatives of the insurance industry, and judiciary regarding the assumption of risk doctrine.

The committee received testimony from the Insurance Department and the insurance industry regarding the assumption of risk doctrine which indicated that the reenactment of the doctrine would have little impact on the state's insurance laws and on the insurance industry in the state. It was noted that if the assumption of risk defense was a total bar to recovery, insurance companies may be paying fewer claims and this eventually would translate into lower rates. The testimony indicated that in states with the assumption of risk doctrine, juries often find a way to find that assumption of risk did not play a part in the injury in order to prevent a complete bar to recovery for the plaintiff. It was also noted that assumption of risk may be more applicable for limiting liability for certain activities, such as the use of anhydrous ammonia or the failure to wear a helmet while riding a motorcycle. Other states have applied the doctrine for certain types of cases, such as sporting events and hunting.

The testimony the committee received from attorneys indicated that they believe the current system of modified comparative fault is fair and equitable. The opinion was expressed that North Dakota juries have been effective at determining who is at fault. Under the state's current system, if a plaintiff is found to be more at fault than the party being sued, the plaintiff is barred from recovering. However, if the plaintiff is found to be less at fault than the party being sued, the plaintiff's damages are reduced by the plaintiff's percentage of fault. It was noted that under the assumption of risk doctrine, if there were a

situation in which the plaintiff was 1 percent at fault and the defendant was found to be 99 percent at fault, the assumption of risk doctrine would prevent the plaintiff from collecting any damages. It was noted that the assumption of risk doctrine may affect no-fault insurance because no-fault providers may seek subrogation from the other insurance company or the defendant. The committee also received testimony from attorneys who believe that the doctrine operates harshly against the injured person even if the defendant is negligent because the doctrine relieves the defendant of all duty. It was noted that while there are varying degrees of fault, the assumption of risk doctrine does not take those degrees into account. Under the current system, assumption of risk is an element of fault that juries are permitted to consider.

The committee also received testimony from a member of the judiciary which indicated that juries are adept at determining whether a person is at fault and in determining the percentage of fault. It was noted that attorneys in the state do a good job of narrowing down the cases that go to trial and that few frivolous cases go to trial in North Dakota. It was reported that an informal survey of the state's district judges indicated that the current law that provides for modified comparative fault should not be changed.

Conclusion

It was the consensus of the committee that the state's modified comparative fault statute works well and does not need to be changed. It was also the consensus of the committee that the assumption of risk doctrine as a complete bar to recovery is not recommended and that the state should continue to use the modified comparative fault system.

COURT FACILITIES STUDY

Section 1 of House Bill No. 1186 directed a study of the leasing or renting of county court facilities by the state or other political subdivision. As introduced, House Bill No. 1186 would have provided for a $2 million appropriation to the Supreme Court for the purpose of providing funding for county office and court building projects. The Senate amended the bill by removing the appropriation and calling for this study. In the testimony received by the standing committee, it was noted that NDCC Section 27-01-01.1 requires each county to "provide the district court in that county with adequate chamber, court, and law library quarters, and lights and fuel and appropriate facilities for clerk of court services that are state funded pursuant to section 27-05.2-02." According to the testimony, however, there is not a clear delineation of responsibility between the state and counties for the provision and upkeep of these facilities. It was noted that the question of who should pay for major construction and remodeling of county facilities to meet the needs of the state judiciary needs to be revisited.

Background

District Courts

On September 7, 1976, the voters approved a new judicial article to the Constitution of North Dakota. Article VI, Section 1, provides:

> The judicial power of the state is vested in a unified judicial system consisting of a supreme court, a district court, and such other courts as may be provided by law.

At the time the new article was approved, there were district courts, county courts of increased jurisdiction, county courts without increased jurisdiction, county justices, and municipal courts.

Article VI, Section 8, provides that the district court has original jurisdiction of all causes, except as otherwise provided by law, and such appellate jurisdiction as may be provided by law or by rule of the Supreme Court.

Article VI, Section 9, requires the state to be divided into judicial districts by order of the Supreme Court. In 1979 the Supreme Court divided the state into seven judicial districts. In each judicial district there is a presiding judge who supervises court services of the courts in the geographical area of the district. The duties of the presiding judge, as established by the Supreme Court, include convening regular meetings of the judges within the district to discuss issues of common concern, assigning cases among the judges of the district, and assigning judges within the district in cases of demand for a change of judge.

Article VI, Section 9, also provides that the electors of the district choose district judges for terms of office of six years.

Article VI, Section 10, requires district court judges to be citizens of the United States and residents of North Dakota, be learned in the law, and to possess any additional qualifications prescribed by law.

County Courts

In 1979 the Legislative Assembly passed Senate Concurrent Resolution No. 4089, which directed the Legislative Council to study the judicial system to determine if structural changes were necessary due to the adoption of the new judicial article. The 1979-80 interim Judiciary "A" Committee recommended, and the 1981 Legislative Assembly adopted, House Bill Nos. 1060 and 1061. The bills provided for one county court in each county instead of the multilevel system of county courts, county justice courts, and county courts of increased jurisdiction; provided county judges had to be law-trained and full time; and provided for the assumption by the state of many district court expenses. The expenses formerly paid by the county which were to be assumed by the state included juvenile court costs; salaries and operating expenses for court reporters, bailiffs, and judicial referees; mileage and compensation, and other related costs for jurors; and felony indigent defense costs. In exchange for the assumption of these county costs by the state, Section 37 of House Bill No. 1060, codified as NDCC Section 27-01-01.1, provided that "[e]ach county shall provide to the district court in that

county with adequate chamber, court, and law library quarters, and lights and fuel."

1991 Court Unification Legislation

In 1991 the Legislative Assembly enacted House Bill No. 1517, which provided a transition process for establishing a single trial court of general jurisdiction. The unification of the court system was to be accomplished through the elimination of county courts and the creation of additional district court judgeships from county court judgeships. In 1991 there were 53 district and county court judges. Under unification the total number of district court judgeships was required to 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.

Section 206 of 1991 House Bill No. 1517 provided a statement of legislative intent regarding the allocation of court revenues and expenditures between the counties and the state. Section 206 provided, in part, that "[t]he counties will remain responsible for all county court services until January 1, 1995, and thereafter will remain responsible for all other substantial court expenditures, including costs associated with the provision of courthouse facilities and the office and staff of clerk of district court in each county . . . ."

Office of Clerk of District Court

Historically, the clerks of court had been elected county officials whose salaries were set by state law but were paid by the counties. The duties of the clerk were prescribed by state law, and the duties of the clerk were essentially performed for the district court.

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, provided for the transfer of the funding for clerk of district court services to the state effective April 1, 2001. 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 positions the Supreme Court determined to be necessary to provide adequate clerk of district court services.

Testimony and Committee Considerations

The committee received extensive testimony and information from the State Court Administrator's office and representatives of the counties regarding the court facilities needs of the counties and ways to address the maintenance and construction needs in the court facilities throughout the state. The committee's consideration centered on two issues--county court facilities issues and the status of the Court Facilities Improvement Advisory Committee and the court facilities improvement and maintenance fund.

County Court Facilities Issues

The committee received testimony that the court facilities needs of the counties are very different. According to the testimony, larger counties need more courtroom facilities, judges' chambers, and office space, whereas the smaller counties may need only office space and a chamber for a traveling judge. The state's changes in the delivery of judicial services has resulted in more judges being housed in the larger cities. According to the testimony, the concerns about adequate funding for court facilities came to a head in 1995 when legislation was passed which directed more of the fees to the state which previously had been allocated to the counties. The legislation resulted in a lost revenue stream for the counties and, consequently, there was less money available to the counties for the maintenance and remodeling of court facilities. It was noted that the Supreme Court does not include funds in its appropriation for the maintenance of district court facilities. It was reported that while the state does not guarantee funding for courtroom security, counties can submit proposals to the state. In most cases, it was noted, the state has agreed to provide 50 percent funding for security projects. It was also reported that there are not suitable court facilities in all 53 counties. The courthouse in Dunn County was built in Manning without a courtroom. Court proceedings for that county are held in a room in a basement in Killdeer which is not accessible to individuals with certain handicaps. According to the testimony, most of the court facilities issues are related to the issue of costs, including the costs of maintaining existing facilities, as well as the costs of new construction and major remodeling.

According to testimony received from a county representative, counties are obligated by state law to provide space for all state court functions. It was reported that of the 77,000 square feet of space in the Cass County Courthouse, nearly one-half is used for state court functions. The testimony also noted that in addition to providing the space, the county government pays the bills for heating and cooling, janitorial services, security services, water, parking, snow removal, telephone and computer wiring, and general maintenance. It was reported that Cass County has developed a proposal that would consolidate all the courts in Fargo and Cass County under a single roof at the Cass County Courthouse; however, $9 million is needed for the project. According to the testimony, the state's judicial services' needs in the county have grown tremendously in recent years; however, fees collected and retained by the county have either been cut or eliminated. It was the recommendation of the representative that a $9 to $10 per square foot lease agreement be established for any county providing space for state-operated functions. According to the testimony, the state and the counties

should have a fair and equitable arrangement regarding court facilities. It was noted that with diminishing fees, some counties do not have enough money to pay for heat and lights in court facilities. It was also noted that if state funding is not made available for the Cass County project, the project will go forward, but the new facility would not house any state functions.

Other testimony indicated that the state uses a significant amount of space in the county court facilities. It was noted that it is very difficult to find any funding for even routine court facility maintenance in some counties. One option suggested was for the state to lease the court facilities from the counties. Another option offered was for the state to pay for the major reconstruction and remodeling with the counties providing for the maintenance. The importance of a continued court presence in every county was emphasized as being a priority.

The committee also discussed options that may be available to address the court facilities issues, including whether the chambers should be state-owned or whether the state should lease space from the counties.

Court Facilities Improvement Advisory Committee and the Court Facilities Improvement and Maintenance Fund

The committee received testimony regarding 2003 House Bill No. 1088. This legislation established the indigent defense administration fund and the court facilities improvement and maintenance fund. Under that legislation, the first $750,000 collected from the court administration fee is to be deposited in the indigent defense administration fund, the next $460,000 is to be deposited in the court facilities improvement and maintenance fund, and any amounts collected beyond those amounts are to be deposited and divided equally between the two funds.

The 2003 legislation also provided for the establishment of the Court Facilities Improvement Advisory Committee. The committee is made up of a county commissioner representative, the executive director of the State Bar Association of North Dakota, a member of the Legislative Assembly, and the State Court Administrator. The committee received testimony that the Court Facilities Improvement Advisory Committee had developed rules for the administration of the court facilities improvement and maintenance fund. It was reported that the first applications for court facilities improvement grants are due by December 31, 2004. Upon receiving the applications, the committee will begin awarding the grants. It was noted that a county receiving a grant is required to contribute 25 percent of the cost of the project and that the county will be required to report on the progress of its project. According to the testimony, there is not a maximum on the amount of the grants; however, the committee will attempt to meet the needs of as many applicants as possible. It was noted that the legislation requires at least 25 percent of the funds awarded during a biennium be awarded to counties with a population of fewer than 7,500.

The committee also received testimony regarding the status of the revenue collected for the court facilities improvement and maintenance fund and the indigent defense administration fund. It was reported that the amount of fees assessed and the collection rate of those fees had exceeded expectations. It was also noted that the judiciary has made the collection of this fee a priority. It was reported that the collection of the criminal defense fee has not had a dramatic effect on the collections of other fees.

As of the final meeting of the Judicial Process Committee on October 4, 2004, it was reported that the collections from the fee totaled $1,000,832. The estimate of total receipts through June 30, 2005, is $1,905,891. This estimate was based upon an estimate of $90,506 per month through the end of the biennium. It was estimated that in addition to the $750,000 that will be deposited in the indigent defense administration fund and the $460,000 that will be deposited in the court facilities improvement and maintenance fund, an additional $347,945 will be deposited in each fund this biennium. It was also reported that approximately 70 percent of the court administration fees that have been assessed have been collected.

Conclusion

As a result of the information and testimony received by the committee regarding the county court facilities, it was the consensus of the committee that the Legislative Assembly continue to monitor the assessment of the court administration fees under 2003 House Bill No. 1088, the revenue collection in the court facilities improvement and maintenance fund, and the awarding of grants by the Court Facilities Improvement Advisory Committee as a means for addressing the county court facilities needs.

UNIFORM LAWS REVIEW

The North Dakota Commission on Uniform State Laws consists of nine 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 nine uniform Acts to the Legislative Council for its review and recommendation. These Acts range from replacements of existing uniform Acts adopted in North Dakota to comprehensive legislation on subjects not covered by existing state law. The nine Acts were the Uniform Securities Act (2002); Revision of Uniform Commercial

Code Article 2 - Sales; Revision of Uniform Commercial Code Article 2A - Leases; Revision of Uniform Commercial Code Article 3 - Negotiable Instruments; Revision of Uniform Commercial Code Article 4 - Bank Deposits and Collections; Revision of Uniform Commercial Code Article 7 - Documents of Title; Revised Estate Tax Apportionment Act (2003); Uniform Parentage Act (2000); and Uniform Trust Code (2000).

Uniform Securities Act (2002)

The Uniform Securities Act (2002) was recommended by the national conference in 2002. The purpose of the Act is to provide basic investor protection from securities fraud and to complement the federal Securities and Exchange Act in an effort to eliminate duplication of regulation. The Act has been enacted in Missouri and Oklahoma.

Testimony received on the Act indicated that the proposed Uniform Securities Act raises issues related to the federal Gramm Leach Bliley Act. In addition to privacy, the Act addresses exemptions to security broker registration for banks that are engaging in certain "traditional" or di minimis securities activities. It was noted that the proposed Uniform Securities Act also covers this subject, but it is narrower than federal law in that the Act permits 200 unsolicited trades to be made by a bank without a state broker registration while federal law allows 500 such trades and the Uniform Securities Act does not include a Gramm Leach Bliley Act-type exemption for private placements. According to the testimony, the difference between these two statutory schemes creates a complexity and possible confusion by banks about the securities activities in which they may engage without registering as a broker.

The committee also received testimony from a representative of the Securities Department regarding the proposed Uniform Securities Act (2002). The sale of securities in the state is currently regulated by the Securities Act of 1951, which is codified as NDCC Chapter 10-04. In regard to uniform securities law, there are currently two versions of the Uniform Securities Act in effect throughout the country. The Uniform Securities Act of 1956 has been adopted, in whole or in part, by 37 United States jurisdictions. The Revised Uniform Securities Act of 1985 has been adopted in only a handful of states. The 1951 Act that is currently in effect in North Dakota is very similar in substance to the Uniform Securities Act of 1956. The new Uniform Securities Act (2002) has been adopted in four states and has been introduced in nine other jurisdictions. According to the testimony, of the states that have adopted the new Act, most have made several significant changes to the Act before adoption. It was noted that a number of states--California, Florida, Massachusetts, North Carolina, New Jersey, New York, Pennsylvania, and Texas--have indicated they will not support the new Act. According to the testimony, it is the opinion of the state regulator in those jurisdictions that existing securities law is superior to the new Act. According to the testimony, the Securities Department has identified those provisions that would be considered significant substantive differences between the 1951 Act and the new Uniform Securities Act. It was noted that the new Act would also have a fiscal impact on the state. Certain alternatives made available in the implementation of the new Act would reduce the amount of filing fee revenue collected by the Securities Department. The Securities Department generates approximately $13 million in revenue per biennium. It was noted that although the potential lost revenue has not been calculated, it could be quite significant and fairly detailed work may be required in order to produce a revenue neutral bill. According to the testimony, the department would prefer to offer amendments that would amend the current securities law. However, if the new Act is introduced, the department will offer amendments. It was noted that there are a number of provisions in the new Act that are good and could be implemented. According to the testimony, those provisions could be added to current state law to update the state's securities law.

The committee makes no recommendation regarding the Uniform Securities Act (2002).

Revision of the Uniform Commercial Code Articles 2 and 2A - Sales and Leases

The revision of Uniform Commercial Code Article 2 - Sales was recommended by the national conference in 2002. North Dakota adopted Article 2 in 1965. Article 2 provides the fundamental rules of contract for the sale of personal property. With key exceptions, such as good faith and reasonableness, the rules of Article 2 are default rules that may be waived or modified by agreement. The rules provide for each stage of a contractual relationship from formation to performance. Included are provisions governing implied and express warranties, risk of loss, statute of frauds and extrinsic evidence, interpretation, auction sales, "gap-filling" terms that apply when parties fail to reach agreement, and breaches of contract and remedies for breaches of contract. According to testimony in explanation of the revised Article 2, the 2002 amendments to Article 2 represent a considerable improvement over existing law and prepare the law of sales for sales of goods in the electronic marketplace.

Revision of 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 Article 2A, with 1990 amendments, in 1991. One state, South Dakota, adopted the 1987 Act; 47 jurisdictions, including Minnesota and Montana, adopted it with 1990 amendments. The Act provides a legal framework for any transaction, regardless of form, that creates a lease.

The committee received no testimony in support of or in opposition to revised Articles 2 and 2A. The committee makes no recommendation regarding Articles 2 and 2A.

Revision of Uniform Commercial Code Articles 3 and 4 - Negotiable Instruments and Bank Deposits and Collections

The revisions of Uniform Commercial Code Articles 3 and 4 - Negotiable Instruments and Bank Deposits and Collections were recommended by the national conference in 2002. These articles are considered companion articles. Article 4 concerns bank deposits and collections, which involve checks, certificates of deposit, and other types of business instruments. North Dakota adopted 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. The newly revised Article 3 updates provisions of the Uniform Commercial Code dealing with payment by checks and other paper instruments to provide essential rules for the new technologies and practices in payment systems. The newly 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. Minnesota enacted the revision of Articles 3 and 4 in 2003.

The committee received testimony from a representative of the banking industry regarding Articles 3 and 4. According to the testimony, the banking industry in the state opposed the revisions when the revisions were before the 2001-02 interim Judiciary "A" Committee and would have vigorously opposed them had bills to adopt them been introduced in the 2003 legislative session. It was noted that in its opposition, the state's banking association has joined with more than 40 bankers associations from other states. According to the testimony, the unity and depth of banker opposition to a uniform proposal for a uniform law is virtually unique and its effect has been that only one state, Minnesota, has adopted a version of the proposed revisions and then only after substantial and substantive amendments. It was noted that while other states have rejected proposed revised Articles 3 and 4, those states have adopted one of its provisions to address the problem of unauthorized drafts against consumers' checking accounts. According to the testimony, the problem arises when a person discloses information about a checking account to a telemarketer or other unscrupulous person who then uses that information to originate an "item" that may be deposited with a financial institution and collected through the automated payment system that has developed for the fast processing of a check. Revised Article 4 deals with the problem by shifting the liability for an unauthorized draft to the depository institution from the paying bank, which has no practical way in which to stop payment on an unauthorized draft within the short timeframes that are prescribed by law for final payment of an item. According to the testimony, the drafters of revised Articles 3 and 4 took this solution from a California law that was passed in 1996. California was the first state to enact this type of law and North Dakota was the second. North Dakota enacted the law in 1997. According to the testimony, this liability shift is being made the "uniform" law of the land and North Dakota already has addressed this problem.

The committee received no testimony in support of the Revision of Uniform Commercial Code Articles 3 and 4. The committee makes no recommendation regarding Articles 3 and 4.

Revision of Uniform Commercial Code Article 7 - Documents of Title

The revision of Uniform Commercial Code Article 7 - Documents of Title was recommended by the national conference in 2003. The 2003 revision of Article 7 updates the original Article 7 to provide a framework for the further development of electronic documents of title and updates the article for modern times in light of state, federal, and international developments.

Testimony in explanation of revised Article 7 indicated that the revision makes way for electronic documents of title and updates or clarifies existing rules of law. References to tariffs and regulations in the original Article 7 which no longer exist with deregulation have been eliminated in the revision. It was noted that documents of title are fundamental to the transfer of goods in interstate commerce. The new Article 7 has been adopted in Alabama, Connecticut, Delaware, Hawaii, Idaho, Maryland, Minnesota, and Virginia.

The committee received no testimony in support of or in opposition to the Revision of Uniform Commercial Code Article 7. The committee makes no recommendation regarding the revised Article 7.

Revised Estate Tax Apportionment Act (2003)

The Revised Estate Tax Apportionment Act (2003) was recommended by the national conference in 2003. The revised Act provides procedures in apportioning the burden of estate taxes among beneficiaries. This is a revision of earlier acts from 1958, 1964, and 1982 and part of the Uniform Probate Code that provides for apportioning the burden of federal or state estate taxes between the respective interests of heirs or legatees of an estate, or beneficiaries of a revocable trust, when the fiduciary for an estate or trust is required to pay such taxes. Generally, the tax burden is allocated to the interests of estate or trust beneficiaries in proportion to their interests in the whole of the taxable estate. This update takes into account all changes in tax rules arising since the last time this Act was amended. The revised Act has been adopted in Idaho.

The committee received no testimony in support of or in opposition to the Revised Estate Tax Apportionment Act. The committee makes no recommendation regarding the revised Act.

Uniform Parentage Act (2000)

The Uniform Parentage Act (2000) was recommended by the national conference in 2000. The Act replaces the 1973 Uniform Parentage Act, the 1988 Uniform Status of Children of Assisted Conception Act, which was enacted in North Dakota in 1989, and the Uniform Putative and Unknown Fathers Act. The North

Dakota commission recommended the Act without the paternity registry and surrogate agreement articles. The Act has been enacted in Delaware, Texas, Washington, and Wyoming and was introduced in California, Illinois, Maine, New Jersey, and Utah in 2004.

The committee received testimony that indicated that a number of substantive and technical changes would be needed to make the revised Act work with other state laws. According to the testimony, the Act would be a significant improvement over the state's current paternity law, which was enacted in 1975. It was noted that the revised Act provides more guidance in many areas than does current law. One such area is when there are multiple presumed fathers and it is necessary to determine which man should be legally established as a child's father. According to the testimony, states and legislatures throughout the country are struggling with the important policy issue of whether the rights and responsibilities of being a parent belong to the biological parent or to a child's "psychological" parent. According to the testimony, the revised Act does not settle this issue with a single arbitrary rule but establishes a framework for a court to make a decision, which is generally lacking in current law.

The testimony indicated that North Dakota has a very successful voluntary paternity acknowledgments program under NDCC Chapter 14-19, which is a separate chapter from the current paternity law. According to the testimony, in some respects the current voluntary paternity acknowledgments law is even better than the voluntary paternity acknowledgments provisions in the revised Act. The testimony indicated that if the revised Act is introduced, it is recommended that the revised Act be amended to incorporate the beneficial provisions in current law or that Article 3 of the Act be omitted in its entirety. It was noted that although the revised Act would be an improvement over current law, a number of changes would be necessary to ensure that the state does not take a step backward and lose the benefit of several provisions in current law.

The committee makes no recommendations with respect to the Uniform Parentage Act (2000).

Uniform Trust Code (2000)

The Uniform Trust Code (2000) was recommended by the national conference in 2000. Testimony in explanation of the code indicated that the code provides a comprehensive model for codifying the law on trusts. Most of the law governing the trust relationship is fundamentally common law. The code does not displace separate laws such as the Uniform Prudent Investor Act, the Uniform Principal and Income Act, the Uniform Custodial Trust Act, and parts of the Uniform Probate Code. The code is intended to provide a set of basic default rules that govern voluntary trusts. It is a default statute because, for the most part, the terms of a trust instrument will govern even if inconsistent with the statutory rules. The code has been enacted in Arizona, Kansas, Maine, Missouri, Nebraska, New Hampshire, New Mexico, Tennessee, Utah, Wyoming, and the District of Columbia.

Testimony in support of the Uniform Trust Code (2000) indicated support for adoption of the Uniform Trust Code subject to possible proposed amendments. According to the testimony, the new Act appears to do a lot to fill in gaps in the current law regarding trusts and is considerably more expansive than the state's current trust law. It was noted that North Dakota has fairly minimal requirements for trusts and that there is a limited amount of case law on the topic. According to the testimony, the new Act would give answers to those areas that were lacking.

The committee received no testimony in opposition to the Uniform Trust Code (2000). The committee makes no recommendation regarding this Act.

STATUTORY REVISION

Technical Corrections - Recommendation

The committee continued the practice of reviewing the Century Code to determine if there are inaccurate or obsolete name and statutory references or superfluous language. The committee recommends House Bill No. 1037 to make technical corrections throughout the Century Code. The following table lists the sections affected and describes the reasons for the change:

14-09-08.5(1)	Section 16 of Chapter 148 of the 1989 Session Laws expired October 1, 1993.
14-09-08.7(3)	Section 16 of Chapter 148 of the 1989 Session Laws expired October 1, 1993.
14-09-08.8(1)	Section 16 of Chapter 148 of the 1989 Session Laws expired October 1, 1993.
14-09-08.9	Section 16 of Chapter 148 of the 1989 Session Laws expired October 1, 1993.
15.1-16-05	The change corrects a reference that was the result of the renumbering of Sections 23-32-09, 28-32-11, and 28-32-12 to 28-32-33, 28-32-34, and 28-32-36 by enactment of 2001 S.L., ch. 293.
40-57.3-03	The change is the result of an Attorney General letter opinion 2004-L-23, which points out an irreconcilable conflict between Sections 40-57.3-02 and 40-57.3-03. The opinion concludes that Section 40-57.3-03 should be interpreted to be consistent with a 1997 amendment to Section 40-57.3-02.

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 is in compliance with law, legislative intent, and sound financial practices.
- To provide the Legislative Assembly with objective information on revenue collections and expenditures to improve the fiscal structure and transactions of the state.

Pursuant to NDCC Section 54-35-02.2, the committee is charged with the duty of studying and reviewing audit reports submitted by the State Auditor. The committee is authorized to make such audits, examinations, or studies of the fiscal transactions or governmental operations of state departments, agencies, or institutions as it may deem necessary.

Committee members were Representatives Francis J. Wald (Chairman), Ole Aarsvold, Larry Bellew, Al Carlson, Jeff Delzer, RaeAnn G. Kelsch, Andrew Maragos, Bob Skarphol, Blair Thoreson, Mike Timm, Amy Warnke, and Lonny Winrich and Senators John M. Andrist, Randel Christmann, Jerry Klein, and Aaron Krauter.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2004. The Council accepted the report for submission to the 59th Legislative Assembly.

During the 2003-04 interim, the State Auditor's office and independent accounting firms presented five performance audit and evaluation reports and 101 financial or information technology application audit reports. An additional 46 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 2003-04 interim:

1. Receive the annual audit report for the State Fair Association (NDCC Section 4-02.1-18).
2. Receive the annual audit report from any corporation, limited liability company, or limited partnership 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, 10-32-156, and 45-10.1-71).
3. Receive annual reports on the writeoffs of accounts receivable at 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 Information Technology Department on state information technology projects and plans pursuant to NDCC Section 54-59-19.
13. Receive reports from the director of Workforce Safety and Insurance and the chairman of the Workforce Safety and Insurance Board of Directors, including a report on the biennial performance evaluation of Workforce Safety and Insurance (NDCC Sections 65-02-03.3 and 65-02-30).

SUGGESTED GUIDELINES FOR 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 audit 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, rules, and regulations under which the agency was created and is functioning.
7. Whether there is evidence of fraud or dishonesty.
8. Whether there are indications of lack of efficiency in financial operations and management of the agency.
9. Whether actions have been taken by agency officials with respect to findings and recommendations set forth in audit reports for preceding periods.
10. Whether all activities of the agency are encompassed within appropriations of specific amounts.
11. Whether the agency has implemented the statewide 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 2003-04 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 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.

Consideration of Proposed Changes to the Guidelines

The committee received suggested changes from the State Auditor's office to revise the current 12 audit guidelines to the following 6:

1. What type of report has the auditor issued on the financial statements of the agency?
2. Was there compliance with statutes, laws, rules, and regulations under which the agency was created and is functioning?
3. Was internal control adequate and functioning effectively?
4. Were there any indications of lack of efficiency in financial operations and management of the agency?
5. Has action been taken on findings and recommendations included in prior audit reports?
6. Was a management letter issued? If so, provide a summary, including any recommendations.

A representative of the State Auditor's office indicated that some of the 12 audit guidelines are no longer applicable to state agencies. Other areas that auditors could address before the Legislative Audit and Fiscal Review Committee include significant changes in accounting policies, accounting estimates, audit adjustments, disagreements with management, consultation with other independent auditors, major issues discussed with management prior to retention, difficulties encountered in performing the audit, and high-risk information technology systems critical to the agency's operations.

A representative of the committee indicated that current guideline No. 7 (Whether there is evidence of fraud or dishonesty.) and No. 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.) are not adequately answered with the State Auditor's office proposed list of guidelines.

The committee learned that the Government Performance and Accountability Committee has recommended a bill that will require the State Auditor's office to address performance measures when conducting audits of state agencies and institutions. If the bill draft is approved by the 59th Legislative Assembly (2005), the Legislative Audit and Fiscal Review Committee may want to adjust the guidelines to reflect the performance measures.

Conclusion

The committee makes no recommendation regarding the suggested changes to the 12 guidelines but indicated it may reconsider the suggested changes at a future meeting, possibly after the 59th Legislative Assembly.

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, 2003 and 2002. The firm presented its audit report at the committee's December 22, 2003, meeting. The audit report

contained an unqualified opinion and did not include any findings or recommendations.

PERFORMANCE AUDITS AND EVALUATIONS

Driver and Vehicle Services

A representative of the State Auditor's office presented the performance audit report of Driver and Vehicle Services, Department of Transportation, for the period July 1, 2000, through December 31, 2002. The Motor Vehicle Division is responsible for all vehicle registration and titling activities. In addition to the Bismarck location, which is operated by state employees, the department has contracted with 13 private vendors and 3 county treasures' offices throughout the state to act on behalf of the division to register vehicles. These 16 locations are motor vehicle branch offices. North Dakota Century Code Section 39-02-03 provides that the director of the Department of Transportation, subject to the Governor's approval, may designate agencies and establish branch offices as necessary to carry out the laws applicable to motor vehicle registration.

The Department of Transportation has 44 driver's license sites across North Dakota, including 8 fully automated major sites (located in the eight major cities and primarily open five days a week, with the exception of two sites), 20 automated field sites (offer the same services as the major sites but are only open at various times during the month), and 16 nonautomated field sites (also open only at various times but the information from the nonautomated sites is manually documented and later entered into the driver's license master system at a major site). The resulting report included 36 recommendations, including:

- The Department of Transportation Motor Vehicle Division should review and analyze the benefits of utilizing a nonsufficient fund (NSF) check recovery service.
- The Department of Transportation should evaluate the process for awarding the motor vehicle branch office contracts, including the need to amend state law and consider the use of competitive contracts for branch office operations.
- The Department of Transportation's Motor Vehicle Division should evaluate the acceptability of a three-week maximum turnaround to its customers, rather than the current typical turnaround time of one and one-half weeks. If this is deemed acceptable, the division should redesign its business processes to reduce staffing while providing a three-week turnaround.

The committee learned that due to delays, the vehicle registration and titling system was not implemented until October 2000, rather than the original contract completion date of October 1997. The vehicle registration and titling system is an information technology system that supports all vehicle registration, titling, financial processing, dealer licensing, and handicap permit placards. A representative of the Department of Transportation indicated the vehicle registration and titling system provides the department and customers with a reliable system, salary savings, ability for customers to conduct business and "walkout" with registration and titling documentation, online registration, shorter "turnaround time," and increased customer satisfaction.

The committee learned that the Department of Transportation originally eliminated seven full-time equivalent (FTE) positions in 1998 related to anticipated staff savings as a result of implementing the vehicle registration and titling system. However, increases in the use of temporary employees and overtime have resulted in an effective net savings of only one FTE position. The Department of Transportation motor vehicle registration and titling system is increasing processing efficiencies and decreasing the use of temporary employees. The motor vehicle registration system used prior to the implementation of the vehicle registration and titling system was approximately 30 years old and difficult to maintain. The actual cost of the vehicle registration and titling system was approximately $3,320,000, or $120,000 more than the original cost estimate of the project.

The committee accepted the performance audit report of Driver and Vehicle Services.

Administrative Committee on Veterans Affairs and the Department of Veterans Affairs

A representative of the State Auditor's office presented the performance audit report of the Administrative Committee on Veterans Affairs and the Department of Veterans Affairs for the period July 1, 2001, through December 31, 2003. The committee learned that two employees of the Department of Veterans Affairs, including the former commissioner, were identified as conservators for veterans. The former commissioner retired in May 2004. A representative of the State Auditor's office indicated that the former commissioner's responses to questions regarding his conservatorship responsibilities and duties were contradicted by other information and sources. The resulting report included 27 recommendations, including:

- The Attorney General's office was requested by the State Auditor's office to determine if the former commissioner of the Department of Veterans Affairs is in noncompliance with NDCC Section 54-10-23 by obstructing or misleading the State Auditor's office or by hindering a thorough examination. In addition, the Attorney General's office may want to determine if department employees performed conservator duties on state time using state resources.
- The Administrative Committee on Veterans Affairs and the Department of Veterans Affairs should take appropriate action to add a conservator program to the department's responsibilities and duties.
- The Administrative Committee on Veterans Affairs should take appropriate action to modify NDCC Section 37-18.1-01 to reduce its current membership of 15 to a more manageable size of approximately 7 members.

- The Department of Veterans Affairs should take the necessary action to ensure proper appropriation authority is obtained for accepting and expending money the department receives from the veterans' postwar trust fund or take the necessary action to modify North Dakota Century Code provisions related to the veterans' postwar trust fund. The Administrative Committee on Veterans Affairs has continuing appropriation authority for the interest income of the veterans' postwar trust fund, but this continuing appropriation does not extend to the Department of Veterans Affairs.

The committee learned that 1996 initiated constitutional measure No. 4 provided for the veterans' postwar trust fund to be a permanent trust fund and for all income received from the fund's investments to be appropriated on a continuing basis to the Administrative Committee on Veterans Affairs for programs that are of benefit and service to veterans and dependents. The emergency hardship assistance grant program administered by the department uses interest income from the veterans' postwar trust fund to provide grants to individuals in need of dental work, eyeglasses, hearing aids, or other medical needs. Veterans' postwar trust fund money has also been used to pay other department expenses, including salaries and benefits, rent, and data processing costs. The Department of Veterans Affairs did not receive appropriation authority to receive and spend this money.

The committee learned that according to a 1992 Attorney General's opinion, the Administrative Committee on Veterans Affairs can spend the interest income of the veterans' postwar trust fund; however, if the committee granted such money to a state entity, the state entity must have a legislative appropriation before it can spend the money.

A representative of the Office of Management and Budget testified that the veterans' postwar trust fund money used to pay salaries and benefits and operating expenses of the Department of Veterans Affairs is not granted to the department but instead is paid directly by the Administrative Committee on Veterans Affairs. The audit report indicated that further research will be done by the Office of Management and Budget and the Attorney General's office to determine whether an Attorney General's opinion is required, sections of the North Dakota Century Code need to be modified, or another solution is available.

The committee learned that the Department of Veterans Affairs has six employees; however, because two employees have a percentage of their salaries paid from the veterans' postwar trust fund, only five FTE positions are identified in the department's budget documents. On October 5, 2004, the Budget Section received a report on all state agencies that have "off-budget" FTE positions including the Department of Veterans Affairs.

The committee received testimony from a representative of the Administrative Committee on Veterans Affairs that all the audit findings included in the performance audit will be addressed. The committee accepted the performance audit report on the Administrative Committee on Veterans Affairs and the Department of Veterans Affairs.

Workforce Safety and Insurance

Pursuant to NDCC Section 65-02-30, a biennial performance evaluation was conducted of Workforce Safety and Insurance. The purpose of the performance evaluation was to assess certain aspects of the functions and operations of Workforce Safety and Insurance to determine whether the divisions of Workforce Safety and Insurance are providing quality service in an efficient and cost-effective manner. The performance audit focused on the Special Investigations Unit, the claims department, fees paid to outside legal defense firms, pharmacy costs, and the extent to which the Office of Independent Review provides advocacy services in keeping with Section 65-02-27. The audit was conducted by Octagon Risk Services, Inc., Oakland, California. The resulting report included 59 recommendations, including:

- Workforce Safety and Insurance should hire and train additional Special Investigations Unit investigators to perform most if not all the work currently being provided by private investigation firms.
- Workforce Safety and Insurance should train claims unit analysts and support staff in the area of compensability determination, including procedures relating to evaluation of injury histories and limitation of liability for injuries not directly related to the injury claim.
- Workforce Safety and Insurance should send legal defense bills to an outside legal firm for an audit of services performed and associated fees.
- Workforce Safety and Insurance should assess the cost benefit of bringing in house the outside legal defense firm services.

The committee learned that 57 of 80 total prior audit recommendations included in the Workforce Safety and Insurance 2002 performance audit were fully implemented, 13 were partially implemented, 6 have not been implemented, and 4 recommendations are no longer applicable.

The committee learned that total pharmacy costs incurred by Workforce Safety and Insurance increased by over $1 million between calendar years 2002 and 2003, for a total cost of over $6 million in calendar year 2003. Increases were primarily attributed to higher pharmaceutical costs and greater utilization of medications.

The committee learned that an industry standard is that approximately 20 percent of workers' compensation claims account for 80 percent of the total cost of benefits paid. However, in fiscal years ended June 30, 1998 and 1999, 1 percent of the total number of claims accounted for approximately 50 percent of the total cost of benefits. Many of the high-cost claims are cases involving serious injuries or death, but some high-cost claims involve individuals with permanent total disability status.

The committee learned that Workforce Safety and Insurance had 968 open permanent total disability claims in North Dakota as of March 31, 2004, which accounts for more than one-third of all open time-loss claims. This unusually high percentage is partially due to unsuccessful vocational rehabilitation cases turning into lifelong benefit programs. North Dakota has a higher percentage of permanent total disability claims than most other states. Many states require individuals to have a more serious impairment, such as blindness, burn, or severe head injury to qualify for permanent total disability status.

The committee learned that Workforce Safety and Insurance has collaborated with Accident Fund Insurance Company of America to offer "all state" accident insurance coverage to companies for a flat annual fee of $600. This is a three-year pilot program that provides accident insurance coverage for employees who temporarily work out of state for a period of less than 30 days.

The committee received testimony from a representative of Workforce Safety and Insurance indicating that steps have been taken to implement the audit recommendations included in the audit report. Pursuant to NDCC Section 65-02-30, the director, chairman of the board, and a representative of Workforce Safety and Insurance are to present the performance audit report and any action taken to implement the recommendations to the House and Senate Industry, Business and Labor Committees during the 2005 legislative session. The committee accepted the performance audit report of Workforce Safety and Insurance.

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 department's performance measures, the unemployment insurance trust fund, the Work Force 2000 monitoring system, the Centralized Unemployment Insurance Claims Center, and the effectiveness of reemployment policy in reducing the duration of benefits. The audit was conducted by Brady, Martz & Associates, P.C., Certified Public Accountants, Bismarck. The resulting report included 26 recommendations, including:

- Job Service North Dakota should consider conducting an independent review of the projections for the unemployment insurance trust fund by an expert, such as an actuary and/or an economist. Job Service North Dakota's response to the recommendation was that the unemployment benefits paid on an annual basis can be quite erratic and still stay within the statistical parameters.
- Job Service North Dakota and the Legislative Assembly should review current law to determine if amendments should be made to ensure that unemployment tax rates stay reasonably stable once the trust fund reserve reaches solvency.
- Job Service North Dakota should develop a verification function for claimants who indicate that they are temporarily unemployed and plan to return to work for their previous employer, thus not subject to work search requirements.

The committee learned that 9 of 16 prior audit recommendations included in the Job Service North Dakota 2002 performance audit were determined to be fully implemented, 2 were partially implemented, 4 have not been implemented (the department has plans to implement 2 of these recommendations), and 1 recommendation is no longer applicable.

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 learned that the trust fund reserve balance as of June 30, 2004, is approximately $57.6 million, excluding Reed Act funds of approximately $15.2 million. The Reed Act funds are available for benefits or unemployment insurance administration through legislative appropriation. Because Job Service North Dakota anticipates using the Reed Act funds for administrative purposes, the funds are not included in determining the progress toward the solvency target. Based on the November 2003 calculation, the targeted January 1, 2007, reserve level is $69.3 million. It is anticipated that based on current trends the trust fund will reach targeted reserve levels by 2006. The actual balance of the reserve fund was approximately $31 million when 1999 House Bill No. 1135, the bill which provided for a required minimum trust fund solvency level, was approved.

The committee learned that determination of a claimant's work search requirement is initially established when the original claim is filed. If the claimant indicates that he or she will be returning to work within the next month and a half for the previous employer, that person will not be subject to work search requirements. For the fiscal year ended June 30, 2003, 57 percent of total claims had no work search requirement and 65 percent of the total benefits paid were to individuals with no work search requirement.

The committee learned that North Dakota has the lowest percentage subsidization of employers who are not fully covering benefits paid former employees. North Dakota's rate is 19 percent. For calendar year 2002, the rate was 28 percent for the best five states.

Pursuant to NDCC Section 52-02-18, the executive director of Job Service North Dakota is to present the performance audit report and any action taken to implement the recommendations to the House and Senate Industry, Business and Labor Committees during the 59th Legislative Assembly. The committee accepted the performance audit report of Job Service North Dakota.

Child Support Enforcement Performance Audit Followup Report

The Legislative Audit and Fiscal Review Committee accepted the followup report presented to the committee

on the status of recommendations included in the Department of Human Services child support enforcement performance audit. The original performance audit report was presented to the Legislative Audit and Fiscal Review Committee in October 2000. The followup report indicated 8 of the original recommendations have been fully implemented, 16 of the original recommendations have been partially implemented, 25 of the original recommendations were determined to be not implemented, and 7 recommendations are no longer applicable. The report concluded that 13 of the 25 audit recommendations determined to be not implemented were not implemented because the child support program was not being "statized" or state-administered, rather than the current state-supervised, county-adminstered structure.

Requests for Performance Audit Consultant

Pursuant to NDCC Section 54-10-01(4), the State Auditor's office may not hire a consultant to assist with conducting a performance audit of a state agency without the prior approval of the Legislative Audit and Fiscal Review Committee. The State Auditor's office is required to notify the agency of the need for a consultant before requesting approval by the Legislative Audit and Fiscal Review Committee. The agency that is audited is responsible for paying the cost of any consultant approved.

The State Auditor's office requested approval from the committee to hire a consultant to assist with conducting the Department of Corrections and Rehabilitation performance audit. The consultant will assist in evaluating and provide recommendations relating to treatment programs, the medical program and contracted medical services, prison overcrowding, and the management and administrative structure of the Department of Corrections and Rehabilitation. The committee approved the State Auditor's office request to hire a consultant for the performance audit, provided that any consulting costs in excess of $50,000 be subject to prior approval from the Legislative Audit and Fiscal Review Committee.

The committee later learned that the State Auditor's office sent a request for proposal to 13 entities, of which 7 were returned to the State Auditor's office. The Department of Corrections and Rehabilitation was permitted to review and provide recommendations regarding each of the proposals. The cost of the proposals returned ranged from $50,000 to $109,000. Based on evaluations of each of the entities, the State Auditor's office selected Criminal Justice Institute, Inc., which submitted a bid of $52,475, as the consultant. The committee approved a motion to approve the additional $2,475 needed to hire Criminal Justice Institute, Inc., to assist with the Department of Corrections and Rehabilitation performance audit. The committee plans to receive this performance audit.

Future Performance Audits

The committee approved a motion requesting the State Auditor's office to conduct:

- A performance audit on state agency cell phone usage, including a review of the propriety of state cell phone usage, the types of cell phone plans purchased, the number of minimally used cell phones, and various alternative methods to reimburse state employees for cell phone usage.
- A performance audit of Fleet Services.
- A followup review on the Veterans Home and the service payments for elderly and disabled (SPED) and expanded SPED performance audits.

Regional Planning Councils

Background

Pursuant to NDCC Section 54-10-14, political subdivisions, which include regional planning councils, are allowed to select their auditors. The committee approved a motion asking the State Auditor's office to perform a desk review of the audit reports of the eight regional planning councils. The regional planning councils were created to address resource conservation and community development needs. The committee learned that six of the regional planning councils have a December 31 yearend, one has a fiscal yearend of March 31, and one has a fiscal yearend of June 30. A representative of the State Auditor's office indicated that there were inconsistencies in interpretations of accounting principles among the audit reports of the eight regional planning councils. Instances were noted in which it appeared the financial statements were not prepared in accordance with generally accepted accounting principles. The State Auditor's office suggested that in order to improve consistency in financial statement reporting, the Legislative Assembly could direct the regional planning councils to be audited by the State Auditor's office. The committee learned that the State Auditor's office currently completes one of the eight regional planning council audits.

The committee learned that seven of the eight regional planning councils have established a nonprofit corporation in order to receive federal funds and other grants that are available only to nonprofit corporations. The development of nonprofit corporations provides another source of funding to the regional planning councils. A representative of the State Auditor's office indicated that according to the Lake Agassiz Regional Council's audit report notes to the financial statements, a $100,000 grant was given to the Lake Agassiz Regional Development Corporation (a nonprofit corporation). The funds were used to receive additional matching funds, which together provided the equity needed to obtain debt financing for the construction of a $2.2 million 24-plex senior congregate living complex in Wahpeton.

Conclusion

The committee makes no recommendation regarding auditor requirements for the regional planning councils.

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 accepted the state's June 30, 2003, Comprehensive Annual Financial Report.

INFORMATION TECHNOLOGY AUDITS

Information technology audits are audits of computer systems used by state agencies. The State Auditor's office conducted a risk assessment audit dated May 15, 2002, of 379 state computer systems. A risk rating was assigned to each system based on the potential for errors in the system or operation and related effect to the State of North Dakota. The report identified 31 high-risk computer systems and 218 moderate-risk systems. The risk rating is used by the State Auditor's office to determine where to best direct its audit resources. The committee received and accepted the following information technology audits:

- **Secretary of State's business entity and accounting systems** (for the year ended December 31, 2002).
- **Department of Human Services VISION - Temporary assistance for needy families** (followup report).
- **Department of Corrections and Rehabilitation subject tracking and reporting system** (for the year ended December 31, 2003).
- **Department of Human Services Medicaid management information system** (for the period October 1, 2001, through September 30, 2002).

ADJUSTMENTS AND CORRECTIONS OF TAX DISTRIBUTION PAYMENTS TO POLITICAL SUBDIVISIONS

The committee learned that the audit reports for the State Treasurer's office and Tax Commissioner's office included findings related to incorrect allocations of tax distribution payments made to political subdivisions. The committee asked the State Auditor's office to conduct a more detailed review of the State Treasurer's office and Tax Commissioner's office tax distribution recalculations for accuracy and the agencies' plans for correction or adjustment of payments to affected cities, counties, and school districts.

State Treasurer's Office

The committee learned that the audit report for the State Treasurer's office for the years ended June 30, 2003 and 2002 included the following recommendations relating to errors discovered in the tax distribution calculations:

1. Coal conversion tax distributions - The State Treasurer use the current average daily enrollment numbers to calculate the distribution of coal conversion taxes in accordance with NDCC Section 57-60-15.
2. Coal severance tax distributions - The State Treasurer use current average daily enrollment numbers, current land assessment values, and correct percentages when calculating coal severance tax distributions in accordance with NDCC Section 57-62-02.
3. State aid distribution - The State Treasurer use the correct population figures in the calculation of the state aid distribution in accordance with NDCC Section 57-39.2-26.1 and maintain support for any changes made to population numbers.
4. Oil and gas production tax distribution - The State Treasurer compute Medora's population on an annual basis for purposes of determining the per capita limitation for oil and gas production tax distributions and work with Billings County and the city of Medora to correct any distributions that were made in error.
5. Highway tax distributions - The State Treasurer implement controls to ensure that the numbers used in the distribution of money in the highway tax distribution fund are proper.

A representative of the State Auditor's office indicated that there was a problem with the Department of Transportation's computer system during 2001 and 2002 that caused "uploaded data," used by the State Treasurer's office to calculate the highway tax distribution amounts, to be incorrect. The Department of Transportation corrected this computer system problem in January 2003.

The committee learned that the State Auditor's office prepared computer spreadsheets to verify the State Treasurer's office tax distribution recalculations and that the review identified numerous errors. A representative of the State Auditor's office indicated that some of the types of errors identified in the original audit findings were not corrected in the recalculations.

The committee learned that the audit report included a recommendation that the State Treasurer's office consult with the Attorney General's office regarding the proper remedy for correction of the erroneous payments. The plan approved by the Attorney General's office for redistribution of tax payments to cities, counties, and school districts provided for the correcting tax payments to be distributed or collected on a net basis, rather than by specific type of tax distribution. The total dollar amount of tax distribution payments issued by the State Treasurer's office was correct, but the errors occurred because of payments being misallocated to the political subdivisions. As each political subdivision's overpayment is refunded or corrected, the corresponding funds will be redirected to political subdivisions that were underpaid.

The committee received testimony from a representative of the Attorney General's office who indicated that based on controlling law, political subdivisions are not entitled to retain the overpayments and there is no legal impediment to the reallocation process.

The committee learned that payment forms were sent to the affected political subdivisions which provided a summary of adjustments made due to previous miscalculations and the corresponding funds affected by the adjustments. The redistribution plan developed by the State Treasurer's office provided for approximately 94 percent of the payments to be corrected by October 2004. A representative of the State Treasurer's office indicated that the department will cooperate with political subdivisions to develop extended repayment schedules if necessary. The State Treasurer's office has created computer spreadsheets to provide additional support for verifying future tax distribution totals generated from the mainframe computer.

The audit report also included a recommendation that the State Treasurer's office reclassify the controller position to an accounting manager or accounting budget specialist II or III classification. A representative of the State Treasurer's office indicated that the department's controller does not have an accounting degree, but does have 25 years of experience. The controller is accountable for the tax distributions and is supervised by the deputy state treasurer.

The committee learned that the State Treasurer's office, Tax Commissioner's office, Attorney General's office, Insurance Department, Department of Transportation, Highway Patrol, and Aeronautics Commission have responsibilities for collecting or distributing taxes. All of these state agencies employ an individual with an accounting degree with the exception of the State Treasurer's office and the Aeronautics Commission. The Aeronautics Commission is responsible for collecting aviation fuels taxes, which are deposited into a fund for grants to airports.

Tax Commissioner's Office

The committee learned that the audit report for the Tax Commissioner's office for the years ended June 30, 2003 and 2002 included a finding that the Tax Commissioner's office deposited incorrect amounts into the cigarette tax distribution fund for 18 of the 24 months of the audit period. The differences per month ranged from $4 to $10,000, with the net result of $6,378 being deposited into the general fund that should have been deposited into the cigarette tax distribution fund and distributed to the incorporated cities.

A representative of the State Auditor's office indicated that the Tax Commissioner's office corrected the tax distribution fund allocation error in November 2003 by depositing $6,378 of general fund receipts into the cigarette tax distribution fund, which was then distributed to the affected cities during that same month.

Conclusion

The committee considered, but did not recommend, a bill draft providing for statutory authority for the State Treasurer to make adjustments to ensure proper distributions to political subdivisions. The committee accepted the June 30, 2003 and 2002 audit reports for the State Treasurer's office and the Tax Commissioner's office.

STATUS OF RACING COMMISSION REVENUES

Background

The committee received a status report from the Racing Commission regarding the status of Racing Commission revenues. The committee learned that for every dollar wagered on horse racing in North Dakota, two and one-half cents goes to the general fund and one and one-half cents goes to the Racing Commission. Taxes are collected on the gross amount wagered, regardless of whether the wager won or lost.

The committee learned that the North Dakota simulcast system total annual "handle," or total amount wagered, began to increase significantly in 1998 due to a "whale," or an individual who wagers a large amount of money, using the North Dakota simulcast system. A representative of the Racing Commission indicated that the Office of Management and Budget was notified that horse racing gaming and excise tax collections for fiscal years ended 2000, 2001, and 2002 were significantly more than forecasts due to the parimutuel racing industry experiencing very unusual and substantive activity from a small group of "players" and that it was uncertain how long this extraordinary level of activity would continue. A single individual wagered $161 million through North Dakota simulcast racing in 2002. However, prior to the end of 2003, that individual began placing wagers through a simulcast system in another state.

The committee learned that the North Dakota simulcast system total "handle" for calendar year 2003 was approximately $153 million. A representative of the Racing Commission indicated that the North Dakota simulcast system 2003-05 biennium "handle" will be approximately $12 million, or $6 million per year, which will generate $300,000 in general fund revenues. The committee learned that with the opening of the racetrack in Fargo and an increase of interest in horse racing in North Dakota, the indigenous "handle" could increase to $10 million per year.

Conclusion

The committee learned that the director of the State Racing Commission resigned in September 2004. The committee approved a motion requesting the State Auditor's office to conduct an updated audit of the Racing Commission, including a detailed analysis of the racing promotion fund, while completing the next audit of the Attorney General's office.

COMMITTEE FOLLOWUP WITH AGENCIES THAT HAVE NOT COMPLIED WITH AUDIT RECOMMENDATIONS

Background

During the 2001-02 interim, the Legislative Audit and Fiscal Review 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 requesting the State Auditor's office to do a six-month followup review. 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.

Committee Followup - State Historical Society

Pursuant to the procedures adopted during the 2001-02 interim, the committee requested by motion and received a followup report from the State Historical Society regarding the implementation of previous State Auditor's office audit recommendations. The State Auditor's office audit report included recommendations related to inventory control weaknesses, documentation controls, cash control weaknesses, and operational improvement. A representative of the State Historical Society indicated that steps have been taken to address each of the recommendations.

AGRICULTURE COMMODITY GROUP AUDIT REPORT ISSUES

North Dakota Wheat Commission

The committee received the audit report of the Wheat Commission for the years ended June 30, 2004 and 2003, which included information regarding the Wheat Commission's case against the Canadian Wheat Board involving unfair Canadian wheat trade. The case was started in 1999 and is still ongoing as of October 2004. The committee learned that the Wheat Commission was able to stay current with its legal fees until September 2002. However, outstanding liabilities for legal fees and other professional services associated with the case have since accumulated to $3,004,678 as of June 30, 2004. The commission's expenditures exceeded revenues by $1,069,311 and $1,527,726 for fiscal years ended June 30, 2004 and 2003, respectively. The Wheat Commission has incurred approximately $6.4 million in total legal and other professional fees relating to the case as of August 2004.

The Wheat Commission has continuing appropriation authority for use of its revenues, which are primarily from the wheat tax levy or "checkoff." Pursuant to NDCC Section 4-28-07, the Wheat Commission may use the amount raised by two mills of the levy provided to support the commission's involvement in trade issues throughout the world.

The audit report contained a recommendation that the Wheat Commission take the following actions relating to the outstanding obligations for legal fees and professional services:

- Obtain immediate advice and approval from appropriate legislative authority and the Attorney General's office on a plan to fund the outstanding liabilities. In addition, the Wheat Commission should not incur any additional legal fees without approval and the aforementioned plan being in place.
- Develop procedures and controls to insure that all activities are properly recorded and reported.
- Request an opinion from the Attorney General's office to determine the legality of the legal fees incurred in excess of available resources.
- Request an opinion from the Attorney General's office to determine if the commission is in violation of NDCC Section 4-28-07.

The committee learned that the law firm representing the Wheat Commission has agreed to accept a three-year repayment schedule. A representative of the Wheat Commission indicated that the commission will request approval from the Legislative Assembly for an increase in the wheat "checkoff" from the present one cent per bushel (10 mills) to one and one-half cent per bushel (15 mills). The increase in the mill levy would increase annual revenues by approximately $1 million. The additional funds would initially be used to retire the debt accumulated relating to the case against the Canadian Wheat Board but would eventually make additional dollars available for other priority programs. A representative of the Wheat Commission indicated that the commission would manage to pay all legal fees over the three-year period even if the increase in the "checkoff" is not approved.

The committee received information from a representative of the Wheat Commission indicating that in late 2002 and 2003 the United States International Trade Commission and the United States Department of Commerce both arrived at affirmative decisions on their respective determinations of preliminary injury and counter available subsidies, resulting in significant duties being assessed against Canadian spring wheat and durum imports. However in October 2003, the International Trade Commission released its final ruling, finding that injury could be established only in the case of spring wheat and the durum duty was rescinded. The process of appeals required to maintain the spring wheat duties continues and an attempt to overturn the durum decision has resulted in significant additional legal costs incurred throughout the fiscal years ended June 30, 2003 and 2004 and at more modest levels in the 2005 fiscal year. Since the start of the case there has been a dramatic reduction of imports of Canadian spring wheat and

durum and the improvement in price and income opportunities continue to be very significant for North Dakota wheat producers and the economy of the state.

A representative of the Wheat Commission indicated that other states surrounding North Dakota have benefited from the case, but it is unlikely the wheat commissions from those states have the ability to financially support the case. They reported the North Dakota Wheat Commission is financially responsible for the legal fees.

The committee learned that Section 34 of 2003 Senate Bill No. 2015 provides for the head of each executive branch agency or institution to report during the budget presentation to the Appropriations Committees during the 2005 legislative session on statutory provisions authorizing the agency or institution to spend funds pursuant to a continuing appropriation. Boards and commissions are not directed to report on continuing appropriation authority. Agriculture commodity groups are required, pursuant to NDCC Section 4-24-10, to report to the House and Senate Agriculture Committees during the legislative session.

A representative of the Attorney General's office indicated that some preliminary work has been conducted regarding whether a board or commission or any state agency with continuing appropriation authority can incur expenditures in excess of revenues. North Dakota Century Code Section 54-27-12 prohibits an agency from spending more than the amount appropriated during a biennium, but the law is not clear when it involves a continuing appropriation. The committee plans to receive the Attorney General's opinion regarding the Wheat Commission's outstanding legal fees when it meets during the 59th Legislative Assembly.

Potato Council

The committee learned that the Potato Council incurred expenditures in excess of revenues by $43,397 and $185,785 for the two-year periods ended June 30, 2002 and 2004, respectively. The Potato Council's deposits and investments totaled $21,277 as of June 30, 2004. The deficit was attributed to some of the largest potato producers requesting "checkoff" refunds over the last two bienniums and a reduction in the total potato acreage in North Dakota. Pursuant to NDCC Section 4-10.1-09, the Potato Council has continuing appropriation authority from its "checkoff" revenues.

Conclusion

The committee accepted the audit reports of the Wheat Commission and the Potato Council. The committee approved a motion that the Legislative Council staff research agriculture commodity groups in South Dakota, Minnesota, Wisconsin, Iowa, Wyoming, Montana, and Idaho regarding whether the state legislatures control appropriations and rates charged or "checkoffs" by the agriculture commodity groups. The committee plans to receive the report when it meets during the 59th Legislative Assembly.

OTHER REPORTS

Ethanol Production Companies

North Dakota Century Code Section 45-10.1-71 provides that any limited liability partnership that produces agricultural ethyl alcohol or methanol and receives a production subsidy from the state must submit an annual audit report to the Legislative Audit and Fiscal Review Committee. Pursuant to this section, the audit report for Alchem, Ltd., LLP for the years ended December 31, 2002 and 2001 and December 31, 2003 and 2002 was filed with the committee and distributed to committee members.

North Dakota Century Code Section 10-19.1-152 provides that any corporation that produces agriculture ethyl alcohol or methanol and receives a production subsidy from the state must submit an annual audit report to the Legislative Audit and Fiscal Review Committee. Pursuant to this section, the audit report for Archer Daniels Midland Company for the year ended June 30, 2004, was filed with the committee.

Department of Human Services Accounts Receivable Writeoffs

Pursuant to NDCC Sections 25-04-17 and 50-06.3-08, the Department of Human Services is required to present a report to the Legislative Audit and Fiscal Review Committee regarding accounts receivable writeoffs at the State Hospital, Developmental Center, and human service centers as of June 30 of each fiscal year. The department's report for fiscal year 2003 was received and accepted by the committee. Accounts receivable writeoffs as of June 30, 2003, were $3,804,060 at the State Hospital, $19,558,973 at the Developmental Center, and $184,835 at the human service centers. The committee learned that during the 2001-03 biennium the Department of Human Services conducted a conversion of its accounts receivable system, which included an analysis of accounts receivable. From 1961 through 1989, parents and clients had varying responsibilities for costs incurred at the Development Center. The analysis included a bookkeeping adjustment in which the Developmental Center's uncollectible receivables, some dating back to 1961, were written off.

The department's report for fiscal year 2004 was also received and accepted by the committee. Accounts receivable writeoffs as of June 30, 2004, were $4,475,374 at the State Hospital, $455,141 at the Developmental Center, and $225,212 at the human service centers.

Department of Human Services Child Support Internal Control Procedures

The committee received a report from a representative of the Department of Human Services regarding the department's internal control procedures for child support. The department's audit report for the years ended June 30, 2003 and 2002 included a recommendation that controls be established over child support

adjustments to ensure proper oversight and approval and ensure that adjustments are accurate and properly recorded. The state's official records of all child support amounts owed, collected, and distributed are maintained electronically on the fully automated child support enforcement system (FACSES). A payment ledger is maintained on FACSES by court order for each person involved with the child support enforcement program. Debt adjustments may be required for a number of reasons, and documentation is maintained to support each adjustment.

The Department of Human Services implemented the recommendation of the State Auditor's office and on a quarterly basis a number of child support cases are randomly selected and reviewed. A representative of the Department of Human Services indicated that the probability of loss from an employee inappropriately adjusting child support receivables is remote and that current controls are adequate.

Information Technology Department

The committee received reports from a representative of the Information Technology Department on the status of information technology projects, services, plans, and benefits pursuant to NDCC Section 54-59-19.

State Agency, Board, and Institution Auditors

The committee received information on audits of state agencies, boards, and institutions that are required by law to be audited by either the State Auditor's office or independent auditors. Pursuant to NDCC Sections 6-09-29, 10-30.5-08, and 4-02.1-18, independent certified public accounting firms are required to conduct the audits of the Bank of North Dakota, North Dakota Development Fund, Inc., and State Fair Association, respectively. The State Auditor's office is directed by statute to select the auditor for the Bank of North Dakota, whereas the North Dakota Development Fund, Inc., and the State Fair Association select their own auditor.

As of June 30, 2003, the audits for 18 other state agencies and programs were conducted by independent certified public accounting firms. Independent auditor services are used primarily because of the nature of these audits, several of which are closely related to the Bank of North Dakota. The Legislative Council is responsible for selecting the auditor for the Legislative Council, Legislative Assembly, and State Auditor's office. The State Auditor's office selects the auditor for the other 15 state agencies and programs. The majority of occupational and professional boards choose to be audited by independent auditors even though they may use the services of the State Auditor's office.

Summary of Accounts Within the North Dakota University System

The committee received a report from a representative of the North Dakota University System regarding accounts used at each institution, including information on the number, purposes, and balances of the accounts. The committee learned that the North Dakota University System uses nearly 15,000 accounts. These accounts are used to track and manage financial activity for a variety of programs, functions, and activities, many of which have external restrictions on the use of the money. Because the legacy system (Higher Education Computer Network) is unable to account for these activities in a more efficient way, it is necessary to have this large number of accounts to ensure the proper amount of control and accountability. The PeopleSoft system, or ConnectND, which will replace the legacy system, has project accounting system capabilities that will allow the North Dakota University System to reduce the total number of accounts maintained to approximately 10,000. The committee learned that separate accounts are required for accounting purposes to be maintained for each project. For example, when a play is performed at a college, an account is established and maintained until all revenue and expenses related to the play are processed.

Report on the Percentage of Tuition and Fees Used to Fund Academic Costs

The committee received information regarding the estimated percentage of tuition and fees that are used to fund academic costs of state institutions of higher education. The committee learned that tuition and fees (net of scholarship allowances) as a percentage of functional expenses, excluding physical plant functions, averaged 37 percent for the North Dakota University System. The percentages range from 23 percent at Minot State University - Bottineau to 49 percent at North Dakota State University. Tuition and fees (net of scholarship allowances) as a percentage of functional expenses, including physical plant functions, averaged 33 percent for the North Dakota University System. The percentages range from 20 percent at Minot State University - Bottineau to 42 percent at North Dakota State University. The percentage variances among the institutions are primarily due to enrollment sizes, types of programs offered, scholarship allowances, student mix, and differences in expense classifications.

"Blended" Component Units

The committee received information regarding component units that are "blended into" state-reporting entities. The committee learned the North Dakota Building Authority (component unit) is blended into the state's debt service and capital projects funds and the North Dakota University System Foundation, North Dakota State University Research Foundation, and Bismarck State College Mystic Athletic Club (component units) are blended into the North Dakota University System financial statements. "Blended" component units, even though they are legally separate entities, are so intertwined with the state or the North Dakota University System that they are, in substance, the same as the state or the North Dakota University System. Because of this close relationship, financial data relating to

component units is included in the audited financial statements of the State of North Dakota and the North Dakota University System.

Status of the ConnectND Project

The committee received a status report on the ConnectND project. A representative of the State Auditor's office indicated that the new PeopleSoft system will provide additional background information on financial transactions and easier access to information. The PeopleSoft system, however, will initially require more audit effort. The financial and human resource components of the PeopleSoft system, except for the employee expense, budget, and strategic sourcing modules, are to be rolled out to state agencies beginning on October 1, 2004. As of January 2005 all State Board of Higher Education institutions are scheduled to be utilizing the financial, human resource, and student administration components of the PeopleSoft system.

Turnback of Unspent General Fund Appropriations - 2001-03 Biennium

The committee received a report from a representative of the Office of Management and Budget regarding the turnback of unspent general fund appropriations for the 2001-03 biennium, comparing the general fund appropriations, general fund expenditures, allowed carryover, and resulting turnback. The 2001-03 biennium general fund turnback was $10.5 million, which is based on:

Total general fund appropriations	$1,740,290,719
Less actual expenditures	1,721,881,358
Total unexpended	$18,409,361
Less	
Capital construction carryovers	464,699
Other carryovers permitted by law	7,397,565
Total general fund turnback (.61% of total general fund appropriations)	$10,547,097

AUDIT REPORTS ACCEPTED BY THE LEGISLATIVE AUDIT AND FISCAL REVIEW COMMITTEE DURING THE 2003-04 INTERIM

Agency	Audit Report Date	Meeting Date Accepted
Abstracters Board of Examiners	August 31, 2003 and 2002	April 19, 2004
Addiction Counseling Examiners, Board of	June 30, 2003 and 2002	April 19, 2004
Adjutant General	June 30, 2002 and 2001	September 3-4, 2003
Administrative Hearings, Office of	June 30, 2003 and 2002	April 19, 2004
Aeronautics Commission	June 30, 2003 and 2002	August 10, 2004
Ag PACE fund	June 30, 2002 and 2001	September 3-4, 2003
Ag PACE fund	June 30, 2003 and 2002	December 22, 2003
Ag PACE fund	June 30, 2004 and 2003	October 27, 2004
Agriculture, Department of	June 30, 2003 and 2002	August 10, 2004
Architecture, Board of	June 30, 2002 and 2001	December 22, 2003
Architecture, Board of	June 30, 2003 and 2002	April 19, 2004
Attorney General	June 30, 2002 and 2001	December 22, 2003
Audiology and Speech-Language Pathology, Board of Examiners on	June 30, 2001 and 2000	September 3-4, 2003
Bank of North Dakota	December 31, 2002 and 2001	September 3-4, 2003
Bank of North Dakota	December 31, 2003 and 2002	April 19, 2004
Barley Council	June 30, 2004 and 2003	October 27, 2004
Beef Commission	June 30, 2003	December 22, 2003
Beginning farmer revolving loan fund	December 31, 2002 and 2001	September 3-4, 2003
Beginning farmer revolving loan fund	December 31, 2003 and 2002	April 19, 2004
Bismarck State College	June 30, 2003 and 2002	April 19, 2004
Building Authority	June 30, 2002	September 3-4, 2003
Building Authority	June 30, 2003 and 2002	December 22, 2003
Building Authority	June 30, 2004 and 2003	October 27, 2004
Career and Technical Education, State Board for	June 30, 2003 and 2002	August 10, 2004
Children's Services Coordinating Committee	June 30, 2003 and 2002	August 10, 2004
Child support enforcement program (performance audit followup)	September 2003	December 22, 2003
Chiropractic Examiners, Board of	December 31, 2001	September 3-4, 2003
Chiropractic Examiners, Board of	December 31, 2002	September 3-4, 2003
Chiropractic Examiners, Board of	December 31, 2003	April 19, 2004
Clinical Laboratory Practice, Board of	June 30, 2003 and 2002	April 19, 2004
Commerce, Department of	June 30, 2003 and 2002	August 10, 2004
Community water facility loan fund	December 31, 2002 and 2001	September 3-4, 2003
Community water facility loan fund	December 31, 2003 and 2002	April 19, 2004
Corn Utilization Council	June 30, 2004 and 2003	October 27, 2004
Corrections and Rehabilitation, Department of	June 30, 2003 and 2002	August 10, 2004
Corrections and Rehabilitation, Department of (subject tracking and reporting system)	December 31, 2003	October 27, 2004
Cosmetology, Board of	June 30, 2003	April 19, 2004
Council on the Arts	June 30, 2003 and 2002	December 22, 2003
Counselor Examiners, Board of	June 3, 2002 and 2001	September 3-4, 2003
Dental Examiners, Board of	June 30, 2003 and 2002	April 19, 2004
Development Fund, Inc.	June 30, 2002 and 2001	September 3-4, 2003
Development Fund, Inc.	June 30, 2003 and 2002	December 22, 2003
Developmentally disabled facility loan program	December 31, 2002 and 2001	September 3-4, 2003
Developmentally disabled facility loan program	December 31, 2003 and 2002	April 19, 2004
Dickinson State University	June 30, 2003 and 2002	April 19, 2004
Dry Bean Council	June 30, 2004 and 2003	October 27, 2004
Electrical Board	June 30, 2003 and 2002	April 19, 2004
Emergency Management, Division of	June 30, 2002 and 2001	September 3-4, 2003
Firefighter's Association	April 30, 2002	September 3-4, 2003
Firefighter's Association	April 30, 2003	August 10, 2004
Funeral Service, Board of	June 30, 2002 and 2001	September 3-4, 2003
Game and Fish Department	June 30, 2002 and 2001	September 3-4, 2003
Governor's Office	June 30, 2003 and 2002	August 10, 2004
Guaranteed student loan program	September 30, 2002 and 2001	September 3-4, 2003
Guaranteed student loan program	September 30, 2003 and 2002	April 19, 2004
Health, State Department of	June 30, 2003 and 2002	August 10, 2004
Highway Patrol	June 30, 2002 and 2001	September 3-4, 2003
Historical Society	June 30, 2002 and 2001	September 3-4, 2003
Housing Finance Agency	June 30, 2002 and 2001	September 3-4, 2003
Housing Finance Agency	June 30, 2003 and 2002	December 22, 2003
Human Services, Department of	June 30, 2003 and 2002	October 27, 2004
Indian Affairs Commission	June 30, 2002 and 2001	September 3-4, 2003
Industrial Commission	June 30, 2003 and 2002	April 19, 2004
Information Technology Department	June 30, 2002 and 2001	September 3-4, 2003
Insurance Commissioner	June 30, 2003 and 2002	August 10, 2004
Job Service North Dakota	June 30, 2002	September 3-4, 2003

Job Service North Dakota	June 30, 2003	December 22, 2003
Job Service North Dakota (performance audit)	September 2004	October 27, 2004
Judicial branch	June 30, 2003 and 2002	April 19, 2004
Labor Commissioner	June 30, 2003 and 2002	August 10, 2004
Lake Region State College	June 30, 2003 and 2002	August 10, 2004
Law Examiners, Board of	June 30, 2003 and 2002	August 10, 2004
Legislative Assembly	June 30, 2003 and 2002	December 22, 2003
Legislative Council	June 30, 2003 and 2002	December 22, 2003
Management and Budget, Office of	June 30, 2003 and 2002	August 10, 2004
Massage, Board of	June 30, 2001 and 2000	December 22, 2003
Massage, Board of	June 30, 2003 and 2002	August 10, 2004
Mayville State University	June 30, 2003 and 2002	April 19, 2004
Medicaid management information system	September 30, 2002	September 3-4, 2003
Medical Examiners, Board of	December 31, 2001 and 2000	December 22, 2003
Medical Examiners, Board of	December 31, 2002 and 2001	April 19, 2004
Medical Examiners, Board of	December 31, 2003 and 2002	August 10, 2004
Mill and Elevator Association	June 30, 2003	December 22, 2003
Mill and Elevator Association	June 30, 2004	October 27, 2004
Minot State University	June 30, 2003 and 2002	April 19, 2004
Minot State University - Bottineau	June 30, 2003 and 2002	April 19, 2004
Municipal Bond Bank	December 31, 2002 and 2001	September 3-4, 2003
Municipal Bond Bank	December 31, 2003 and 2002	April 19, 2004
North Dakota State University	June 30, 2003 and 2002	August 10, 2004
North Dakota University System	June 30, 2003	April 19, 2004
Nursing Home Administrators, Board of Examiners for	June 30, 2002 and 2001	September 3-4, 2003
Nursing, State Board of	June 30, 2003 and 2002	April 19, 2004
Occupational Therapy Practice, Board of	June 30, 2003 and 2002	April 19, 2004
PACE fund	June 30, 2002 and 2001	September 3-4, 2003
PACE fund	June 30, 2003 and 2002	December 22, 2003
PACE fund	June 20, 2004 and 2003	October 27, 2004
Parks and Recreation Department	June 30, 2003 and 2002	August 10, 2004
Pharmacy, Board of	June 30, 2003 and 2002	December 22, 2003
Plumbing, Board of	June 30, 2003 and 2002	April 19, 2004
Potato Council	June 30, 2004 and 2003	October 27, 2004
Professional Engineers and Land Surveyors, Board of Registration for	June 30, 2001	September 3-4, 2003
Professional Engineers and Land Surveyors, Board of Registration for	June 30, 2002	December 22, 2003
Professional Engineers and Land Surveyors, Board of Registration for	June 30, 2003	August 10, 2004
Professional Soil Classifiers, Board of Registration for	June 30, 2003	August 10, 2004
Protection and Advocacy Project	June 30, 2002 and 2001	September 3-4, 2003
Public Accountancy, Board of	June 30, 2003	December 22, 2003
Public Employees Retirement System	June 30, 2002 and 2001	September 3-4, 2003
Public Employees Retirement System	June 30, 2003 and 2002	December 22, 2003
Public Instruction, Department of	June 30, 2003 and 2002	August 10, 2004
Public Service Commission	June 30, 2003 and 2002	April 19, 2004
Real Estate Appraiser Qualifications and Ethics Board	June 30, 2001 and 2000	September 3-4, 2003
Real Estate Commission	June 30, 2002	September 3-4, 2003
Reflexology, North Dakota Board of	June 30, 2003, 2002 and 2001	August 10, 2004
Respiratory Care, State Board of	June 30, 2003 and 2002	April 19, 2004
Retirement and Investment Office	June 30, 2002 and 2001	September 3-4, 2003
Retirement and Investment Office	June 30, 2003 and 2002	December 22, 2003
Secretary of State	June 30, 2002 and 2001	September 3-4, 2003
Secretary of State's (business entity and accounting systems)	December 31, 2002	December 22, 2003
Securities Department	June 30, 2002 and 2001	September 3-4, 2003
Seed Department	June 30, 2002 and 2001	September 3-4, 2003
Social Work Examiners, North Dakota Board of	June 30, 2003 and 2002	April 19, 2004
Soybean Council	June 30, 2003 and 2002	December 22, 2003
Soybean Council	June 30, 2004 and 2003	October 27, 2004
State Auditor	June 30, 2003 and 2002	December 22, 2003
State College of Science	June 30, 2003 and 2002	April 19, 2004
Statewide Comprehensive Annual Financial Report (CAFR)	June 30, 2003	April 19, 2004
State Fair Association	September 30, 2002 and 2001	September 3-4, 2003
State Fair Association	September 30, 2003 and 2002	December 22, 2003
State Treasurer	June 30, 2003 and 2002	April 19, 2004
Stockmen's Association	December 31, 2002 and 2001	September 3-4, 2003
Stockmen's Association	December 31, 2003 and 2002	April 19, 2004
Student loan trust	June 30, 2002	September 3-4, 2003
Student loan trust	June 30, 2003	December 22, 2003
Tax Commissioner	June 30, 2003 and 2002	April 19, 2004
Transportation, Department of	June 30, 2003 and 2002	April 19, 2004
Transportation, Department of - Driver and Vehicle Services (performance audit)	July 2003	September 3-4, 2003
University and School Lands, Board of	June 30, 2002	September 3-4, 2003
University and School Lands, Board of	June 30, 2003 and 2002	December 22, 2003

University of North Dakota	June 30, 2003 and 2002	August 10, 2004
University System office	June 30, 2002 and 2001	September 3-4, 2003
Valley City State University	June 30, 2003 and 2002	April 19, 2004
Veterans Affairs, Administrative Committee and Department (performance audit)	March 2004	August 10, 2004
Veterans Affairs, Department of	June 30, 2000 and 1999	September 3-4, 2003
Veterans Affairs, Department of	June 30, 2002 and 2001	September 3-4, 2003
Veterans Home	June 30, 2003 and 2002	April 19, 2004
VISION system (information technology audit followup report)	October 21, 2003	December 22, 2003
Water Commission	June 30, 2003 and 2002	August 10, 2004
Wheat Commission	June 30, 2004 and 2003	October 27, 2004
Williston State College	June 30, 2003 and 2002	August 10, 2004
Workforce Safety and Insurance	June 30, 2002 and 2001	September 3-4, 2003
Workforce Safety and Insurance	June 30, 2003 and 2002	December 22, 2003
Workforce Safety and Insurance (performance audit)	September 2004	October 27, 2004

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 2005 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 46-02-05 to determine the contents of contracts for the printing of legislative bills, resolutions, and journals; and (5) the responsibility to administer the appropriation for the purpose of upgrading the sound systems in the House and Senate chambers. The Legislative Council assigned to the committee the responsibility under Section 54-60-03 to determine which standing committees will receive a report from the Commissioner of Commerce and the responsibility to determine when agricultural commodity promotion groups must report to the standing Agriculture Committees under Section 4-24-10. The Legislative Council also assigned to the committee the responsibility to administer the appropriation for upgrading the sound systems in the Senate and House chambers under 2003 Session Laws, Chapter 36, Section 31.

Committee members were Senators Bob Stenehjem (Chairman), Randel Christmann, Michael A. Every, David P. O'Connell, and Herb Urlacher and Representatives Rick Berg, LeRoy G. Bernstein, Merle Boucher, Eliot Glassheim, and David Monson. Representative Janet Wentz was a member of the committee until her death on September 15, 2003.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2004. The Council accepted the report for submission to the 59th Legislative Assembly.

LEGISLATIVE RULES

The committee continued its tradition of reviewing and updating legislative rules. After the 2003 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.

Officer and Employee Positions

Senate and House Rules 206 require recorded roll call votes for election of the Secretary of the Senate or Chief Clerk of the House, journal reporter, and sergeant-at-arms. The current procedure is to suspend these rules because274 these positions are filled during the first day of the organizational session, before the voting systems are loaded with names, and manual roll call votes would be required.

The committee recommends amendment of Senate and House Rules 206 to provide for results of the vote, rather than the vote, for election of the Secretary of the Senate or Chief Clerk of the House, journal reporter, and sergeant-at-arms to be printed in the Senate or House journal. Adoption of this rules change would eliminate the need to suspend the rules.

Vote on Behalf of Members

Senate and House Rules 321 provide that every member who is present is to vote on the question unless excused. A question has arisen as to the practice of voting for a member who is in the chamber but not at the member's desk.

The committee recommends amendment of Senate and House Rules 321 to authorize a member to cast a vote on behalf of a member who has announced verbal instructions while in the chamber. Under Senate and House Rules 102, a member must be physically present in the chamber to vote.

Prefiling Procedure

Senate and House Rules 401(3) describe the procedure for prefiling of bills and resolutions. The rules describe a procedure that provides for the Legislative Council to deliver those bills and resolutions to the President of the Senate or the Speaker of the House and their assigning the bills and resolutions to committee and arranging for notice of hearing. In practice, bills and resolutions are prefiled with the Legislative Council and the director of the Legislative Council consults with the majority leaders who determine appropriate committee assignments.

The committee recommends amendment of Senate and House Rules 401(3) to provide for the Legislative Council to identify the sponsoring committee as assigned by the majority leaders and then to deliver those bills and resolutions to the Secretary of the Senate or Chief Clerk of the House.

Consent Calendar

Joint Rule 206 provides that bills or resolutions receiving unanimous do pass recommendations may be placed on the consent calendar upon committee recommendation. During the 2003 legislative session at least two concurrent resolutions that received do not pass recommendations were placed on the consent calendar.

The committee recommends amendment of Joint Rule 206 to provide that a bill or resolution that receives

a unanimous do not pass recommendation may be placed on the consent calendar upon recommendation of the committee. With this rules amendment, a bill or resolution receiving a unanimous do not pass recommendation may be treated the same as a bill or resolution receiving a unanimous do pass recommendation with respect to placement on the consent calendar.

Prefiling of Appropriation Bills

Joint Rule 208 provides that bills implementing the Governor's budget are to be filed the day after the organizational session adjourns. North Dakota Century Code Section 54-44.1-07, as amended in 2003, provides that appropriation bills must be submitted to the Legislative Council within seven days after the adjournment of the organizational session.

The committee recommends amendment of Joint Rule 208 to provide for the filing of bills implementing the Governor's budget with the Legislative Council within seven days after adjournment of the organizational session, as required by NDCC Section 54-44.1-07.

Numbers of Copies of Printed Bills and Resolutions

Joint Rule 603(2) provides for copies of engrossed bills and resolutions to be printed on request of the Secretary of the Senate or Chief Clerk of the House. Since 2001, copies of engrossed bills and resolutions are printed automatically without involvement of the Secretary of the Senate or the Chief Clerk of the House. The Legislative Council determines the number of copies of engrossed bills and resolutions under Joint Rule 603(2). Since the change in Joint Rule 603(2) to provide for the Legislative Council to determine the number of engrossed bills to be printed, the Secretary of the Senate and Chief Clerk of the House become involved in requesting the printing of engrossed bills only in the rare instance when a bill originating in the other house is engrossed in the second house.

The committee recommends amendment of Joint Rule 603(2) to provide that the number of bills to be printed when requested by the Secretary of the Senate or Chief Clerk of the House is determined by the Legislative Council.

Legislative Ethics Statement

Joint Rule 1001(3) contains a reference to two-year terms of members of the Legislative Assembly. This language relates back to when members of the House were elected to two-year terms.

The committee recommends amendment of Joint Rule 1001(3) to eliminate the reference to two-year terms of members of the Legislative Assembly.

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 329 and 510 that would have required the Appropriations Committees to recommend rereferral of a measure to the original standing committee for a determination to concur in amendments by the Appropriations Committee which change the intent of a measure originally rereferred to the Appropriations Committee because the measure would have an effect of $50,000 or more on the appropriation of a state agency. The committee also reviewed a proposed amendment of Senate Rule 350 which would have tracked the language in House Rule 350 concerning a single vote to accept recommendations to not concur and to appoint conference committees.

LEGISLATIVE INFORMATION SERVICES

Lotus Notes Applications

In 1995 Lotus Notes was selected as the e-mail software and Lotus SmartSuite was selected as the primary office software of the legislative branch because Lotus Notes had excellent security features, could replicate documents, featured application development software, and featured document management. These features were used extensively by legislators in replicating (downloading) documents or e-mail away from Bismarck and working on those materials offline and thus not incurring long-distance charges at 10 cents per minute. The application development software was used to develop several applications integrated with Lotus Notes e-mail, such as the fiscal notes system, telephone message system, conference committee assignment system, meeting materials system, expense voucher application, payroll import application, digital sender, and Domino.Doc (a document management system). In over eight years of Lotus Notes use, approximately $640,000 has been invested in developing applications integrated with or using Lotus Notes.

The committee received information on migrating from Lotus Notes applications to Microsoft Exchange applications. Although the state supports two messaging and collaboration platforms--Microsoft Exchange and Lotus Notes--the Information Technology Department is adopting Microsoft Exchange as the state's enterprise groupware system. The result will be that all of state government will move to one software platform and that platform is Microsoft Exchange. The timeframe for agencies to complete their migration from Lotus Notes applications is 2010. The four largest departments use Lotus Notes--the Department of Human Services, the Department of Transportation, the Bank of North Dakota, and the Legislative Council.

The committee received estimates from the Information Technology Department as to the cost of programming for conversion of Lotus Notes applications. The estimates included:

- $1,970 to develop an interface for the Internet and the hall monitor system.
- $26,652.50 to develop a conference committee system and interfaces.
- $54,073.75 to develop a constituent/telephone message system.
- $131,877.81 to purchase Microsoft Office for 239 users in the legislative branch.
- $21,468.25 to replace Lotus Notes e-mail with Microsoft Outlook e-mail in Lotus Notes applications used by the Legislative Council staff.
- $392,018.75 to replace Lotus Notes applications (which does not include replacing the conference committee system and interfaces and the constituent/telephone message system).
- Unknown cost to replace Domino.Doc.
- $3,500 per month for the seven converted applications to be hosted on the Information Technology Department's server.

Microsoft Outlook E-Mail

Over the years, individual legislators have suggested replacing Lotus Notes e-mail with Microsoft Outlook e-mail and replacing Lotus SmartSuite with Microsoft Office.

The Information Technology Department informed the committee that the easy part of replacing Lotus Notes e-mail is placing legislators in Microsoft Outlook. The difficult part is identifying the pieces of Lotus Notes e-mail which are linked to other applications in the legislative branch.

The effects of migrating legislators from Lotus Notes e-mail to Microsoft Outlook 2003 e-mail were discovered during a Microsoft Outlook pilot project, in which 12 legislators used Microsoft Outlook 2003 e-mail.

In Lotus Notes, meeting notices are sent to legislators via e-mail and when a legislator accepts a meeting the meeting is added to the legislator's calendar (in Lotus Organizer) and when a legislator declines a meeting a notice is sent to the Legislative Council staff. In Lotus Notes, a legislator can replicate meeting information materials, which then reside on the legislator's computer. These features are not available with Microsoft Outlook 2003.

The conference committee scheduling system uses Lotus Notes e-mail and legislators' computers have been programmed to automatically accept an "invitation" from the House majority leader's staff assistant (who schedules conference committees) to the conference committee meeting. Lotus Notes also displays conference committee schedules in a variety of methods. These features are not available with Microsoft Outlook 2003.

The telephone message system in Lotus Notes consists of an "add to constituent views" component, whereby a legislator can forward an e-mail message to the telephone message center and the telephone message center verifies the message is from the legislator's constituent and then updates the constituent information in LAWS. This component is not available with Microsoft Outlook 2003 and a legislator will need to manually add the telephone room's address as a forwarding address to an e-mail message and then forward that message to the telephone center.

The telephone message system also contains a "telephone message notification" component, whereby legislators are informed when the telephone center has sent a new message to a legislator. This pop-up window feature is not available with Microsoft Outlook 2003.

The committee determined that all legislators and appropriate Legislative Assembly employees would be migrated from Lotus Notes e-mail to Microsoft Outlook e-mail.

The committee authorized development of interfaces between Microsoft Outlook 2003 and the hall monitors and the Internet so that conference committee schedules, which relied on Lotus Notes e-mail for displaying conference committee information, would appear on the hall monitors and the Internet. The net effect of not developing the constituent views icon or telephone message icon is to return legislators to the LAWS system as it was in 1999-2001, i.e., without those enhancements.

E-Mail File Quotas

The issue of e-mail file quotas resurfaced as legislators were being migrated from Lotus Notes e-mail to Microsoft Outlook 2003 e-mail.

In May 2002 the Information Technology Department established an e-mail file quota of 50 megabyte (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. 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.

When the issue of legislators exceeding the 50-MB e-mail file quota arose during the 2001-02 interim, the Legislative Management Committee recommended that the 50-MB e-mail file quota applicable to state officers and employees be applicable to legislators. The committee also recommended that the Legislative Council staff arrange with the Information Technology Department for an unlimited quota for the period beginning December before a legislative session and ending May 31 after the 2003 legislative session adjourned. The Legislative Council staff had planned to move legislative mailboxes back to the Legislative Council server from the Information Technology Department servers and to propose eliminating the quota for legislators because the Legislative Council server would handle foreseeable e-mail files without regard to any quota.

This plan, however, was not implemented because of the migration of legislators to Microsoft Outlook e-mail, which requires use of the servers in the Information Technology Department.

The committee reviewed legislators' e-mail file sizes and discovered that 22 legislators were in the 50 to 100 MB range, 12 were in the 100 to 150 MB range, 5 were in the 150 to 300 range, and 2 were over 300 MB. Exceeding the quota caused difficulty during the migration process and the committee was asked to address this issue.

The committee received information on the ability of legislators to archive e-mail files and thus remove those files from the e-mail system (and the quota). The committee also received information on archiving documents to a CD or an external flash drive, but CD-ROM or flash drives would have to be acquired. 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 determined that during the migration of legislators to Microsoft Outlook e-mail, legislators should receive training on how to archive e-mail so that they can better manage e-mail.

Dial-Up Access

The committee surveyed the 137 legislators who have state-provided notebook computers. The surveys served two functions: determine how quickly legislators responded to e-mail and obtain information on the type of access legislators have to local Internet service providers.

Return receipts were used to ascertain how quickly legislators viewed their e-mail: 43 receipts were received on the first day, 21 on the next, 4 to 9 were received each day for the next four days, and 1 or 2 were received each day over the next eight weeks.

Survey responses indicated slow connection speeds continue to be a major problem for legislators. Depending on location and telephone wiring, connection speed ranged between 5 kilobits per second (kbps) and 28.8 kbps. Twenty-four legislators used the dial-up connection daily, 27 used the connection several times weekly, 38 used local Internet service providers, 14 used digital subscriber line (DSL) service, 11 used cable modem service, and 10 used wireless service. Many legislators commented that the state dial-up access was too slow to be worthwhile.

The committee authorized the provision of DSL or equivalent high-speed service to legislators. Where that service is not available, service is to be provided through a local Internet service provider. The 800# dial-up access is to be continued, primarily for use when a legislator is away from the local DSL or high-speed connection. This authorization also reflects the fact that the Information Technology Department recommended that legislators use Internet service providers for access to the state network as a means of obtaining faster connection speeds than that provided by the 800# dial-up number and reducing the overall costs of the per minute charges for using the number. The primary benefit of providing legislators with faster connection speed is to reduce the time taken to download e-mail and thus increase efficiency and the effectiveness of e-mail as a communication medium for legislators.

Microsoft Office Suite Software

The committee received information on the cost of installing Microsoft Office Standard, which includes Outlook, Word, Excel, and PowerPoint. Committee members discussed the impact of using word processing software that differs from what has become the standard for general office work--Microsoft Word. A major concern was the fact that many people who receive documents or e-mail attachments from legislators cannot open those attachments because their software is not compatible with Lotus Word Pro or Lotus 1-2-3.

The committee approved installation of Microsoft Office 2003 Standard edition on legislators' notebook computers and on certain personal computers used by the Legislative Assembly, primarily leadership staff and secretarial services. The cost of acquiring Microsoft Office 2003 Standard edition is $38,137.60 ($238.36 per user for 160 users) in the Legislative Assembly.

Personal Computer Use Policy

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) must recognize that the legislator is responsible for the cost of installing and maintaining nonlegislative software; (2) must recognize that the Legislative Council staff is not responsible for installing or supporting nonlegislative software; and (3) 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.

The committee recommends three changes in the policy. Because legislators primarily are connected through private service providers, as described under **Dial-Up Access**, the reference to a 60-hour per month maximum for access to the Internet is obsolete. This maximum originally was included in the policy as a means to control costs of dial-up access.

Although the policy provided that for a fee established by the Legislative Management Committee an authorized user could request assistance by the Legislative Council staff for service of software or hardware not provided or installed by the Legislative Assembly or

Legislative Council, the Legislative Management Committee had not established a fee for that service.

The committee recommends elimination of the reference to a 60-hour per month maximum for access to the Internet. The committee recommends revision of the policy to reflect that the fee for requesting training, installation service, or other support services for software or hardware not provided by the Legislative Assembly or the Legislative Council or for software not installed by the Legislative Council be a fee equivalent to the desktop support analyst rate of the Information Technology Department. The committee also recommends revision of the policy to reflect that the assistance provided by the Legislative Council for privately installed hardware and software be only for hardware or software for which the staff has experience or knowledge in its use.

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. Seven entities paid a $325 subscription fee to receive these reports during the 2003 legislative session and one paid $435 to receive the reports by mail.

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 2005 bill status report and pay a $350 subscription fee, $460 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, if mailed, the cost of mailing these documents. During the 2003 legislative session, 14 entities paid to pick up a set of bills and resolutions from the bill and journal room and no one paid to receive the set by mail; 39 paid to pick up a set of bills and resolutions as introduced and as engrossed and two paid to receive a set by mail; 22 paid to pick up a set of journals and one paid to receive a set by mail; and 12 paid to receive the journal index.

The committee established the following fees with respect to these documents during the 2005 legislative session--$150 for a set of bills and resolutions as introduced and printed or reprinted, $260 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 $80 for a set of daily journals of the Senate and House, $190 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 of the 2005 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 2003 legislative session should continue and a fee should be imposed to cover the cost of mailing. During the 2003 legislative session, one entity paid to receive the hearing schedules by mail and one entity paid to receive the calendars by mail. The committee established a subscription fee of $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 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 2004 and by the North Dakota High School Activities Association State Student Congress in November 2004 and November 2005; use of the House chamber by the Supreme Court for the admission to the bar ceremony in October 2003 and September 2004, by the Program Committee of the North Dakota Leadership Seminar in June 2004, by the Silver-Haired Education Association in July 2004, by the United States Army Reserve for a ceremony welcoming the 439th Engineer Battalion on its return from Iraq in July 2004, and by the Land Department for an oil and gas lease auction in November 2004.

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

With respect to the contract for printing bills, resolutions, and journals for the 59th Legislative Assembly, the committee reduced the number of introduced bills and resolutions printed from 350 to 325 and reduced the number of journals printed from 850 to 750. Both changes were based on the surplus of bills, resolutions, and journals remaining from the 2003 legislative session.

LEGISLATIVE WING RENOVATION PROJECTS

Chambers Sound Systems

During the 2003 legislative session, Community Access Television experienced sound level and quality problems while broadcasting the floor session of each house. The committee reviewed an estimate made during the 2003 legislative session relating to proposed enhancements to the sound system in each chamber. The proposal included separating the microphones from a single, daisy-chain wiring system into four separate sections; separating the processors for the floor microphones and the podium microphones; and putting relays at the amplifiers rather than at the on-off buttons of the microphones.

The committee authorized the enhancements under its administration of the appropriation for repairs to the sound systems in the chambers.

Chambers and Memorial Hall Folding Chairs - Brynhild Haugland Room Chairs

The committee assumed responsibility for administering an appropriation of $30,000 for replacement of the chairs used to seat guests in the Senate and House chambers and used in Memorial Hall for various functions and for replacement of the chairs and tables in the Brynhild Haugland Room. The intent of the funding was to purchase chairs either folding or stacking which would be nicer and more color- and style-coordinated for use in Memorial Hall and in the chambers. The intent also was to replace the chairs and tables in the Brynhild Haugland Room with nicer and more color- and style-coordinated chairs.

The committee discovered that Facility Management had recently replaced the tables in the Brynhild Haugland Room with smaller, lighter tables that allowed easier moving, storing, and rearranging for different uses in the room. Thus, the committee directed the full amount of the appropriation toward replacement chairs.

The committee viewed two types of folding chairs for use in the chambers and Memorial Hall. The committee selected a padded folding chair with a welded brace. At least 150 folding chairs are needed to allow each legislator to have one guest on the floor at the same time in each chamber.

The committee viewed five types of stacking chairs for use in the Brynhild Haugland Room. Although stacking chairs similar to those used in the Pioneer Room were considered, the funding available for purchase of these chairs as well as the folding chairs would not have permitted a workable number of chairs to be acquired. The Brynhild Haugland Room capacity is 100 to 150 seated, depending on the seating arrangement. The committee selected a flexback stacking chair for the Brynhild Haugland Room.

The committee received proposals from four local vendors as well as reviewed prices from a catalog vendor. The committee accepted the proposal from a local vendor, which was the lowest bid for both types of chairs. The proposal provided 150 flexback chairs for the Brynhild Haugland Room, pumpernickel in color, and provided 186 folding chairs for use in the chambers and Memorial Hall, hyacinth in color.

Brynhild Haugland Room Sound System

The sound system in the Brynhild Haugland Room was installed in 1981, during the legislative wing renovation project. Since that time, the equipment has been replaced or upgraded as needed. After the 2003 legislative session, the committee received a proposal to repair problem areas, e.g., replace the mic mixer and replace old, dried-out speakers. The committee expressed interest in replacing the 23-year-old sound system with a modern system, primarily because of the importance of a good sound system in a major legislative hearing room. The committee also noted the room is used throughout the year for a variety of functions and the sound system is an important feature for most of the functions of the room. The committee requested Facility Management to prepare invitations to bid to replace the sound system.

The committee approved installation of a new sound system in the Brynhild Haugland Room. The new system includes ability to provide up to 32 rather than 8 microphones, additional access points on the floor to allow more versatility in arranging the room for hearings or other functions, network and telephone connections in the access points to allow various types of presentations and conference communications, and an enhanced media feed in the back of the room so as to avoid media microphones on tables or lecterns.

Committee Hearing Monitors

The committee hearing monitor on the east side of the information kiosk on the first floor of the capitol is difficult to read because of glare from sunlight through the windows in Memorial Hall.

The committee authorized moving the monitors on the information kiosk as appropriate to aid in readability. The monitor on the east side of the kiosk was moved to the west side and both monitors were rearranged as appropriate.

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 of that year, and this policy has been followed since that time. 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 considered the fact that some legislators have requested something other than regular stationery because they write short notes to constituents rather than formal letters and because e-mail has resulted in reducing the volume of letter correspondence by legislators. The committee determined that legislators should have the option of receiving Monarch (7.5 inches x 10.5 inches) or regular (8.5 inches x 11 inches) stationery.

In 2003, every legislator was 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. A legislator also can request an additional ream of stationery and 500 envelopes. With respect to leadership positions, the Speaker, each leader, and each assistant leader also receive 500 sheets of Monarch stationery (with 500 envelopes); and the leaders can receive as much regular stationery (and envelopes) as needed. The committee determined that legislators should be able to select one or both types of stationery.

The committee recommends the policy that every legislator be given the option of receiving none, 250 sheets of regular or Monarch stationery and envelopes, 250 sheets of each type of stationery and envelopes, or 500 sheets of either type of stationery and envelopes. A legislator also can request an additional 500 sheets of stationery and 500 envelopes, up to 1,000 sheets and envelopes total. The Speaker, each leader, and each assistant leader continue to receive as much regular and Monarch stationery as needed.

Brief Bags

The committee approved continuation of the policy, first established in 1984, of providing a brief bag (also referred to as a letter file or carrying case) to each legislator on request. The committee continued use of a canvas-type carrying case first provided in 2002.

Capitol Access 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. Every legislator continues to receive an identification card, and a photo identification card is issued to a legislator on request.

Since October 1999, the Capitol has operated under a security key 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 card to present near a reader that unlocks the door and records use of the card. Each security card is coded and a computerized record is kept of use. During the 2001 session, every legislator received a security card for access to the Capitol and during the 2003 session, a security card was provided to a legislator on request. The leaders' keys were effective throughout the year and the cards of other members were effective during the legislative session. During the 2001-02 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.

An issue has arisen, however, in that some legislators question whether they have returned security cards or ever received the cards. Security is not an issue in these instances because the missing cards are deactivated. Recordkeeping needs to be accurate, however, because NDCC Section 44-08-18 provides for withholding the final salary check if a key is not returned upon termination of employment.

The committee recommends that a security card be provided to a legislator who requests a card and signs a form acknowledging receipt of the card.

Legislators' Expense Reimbursement Policies

Article XI, Section 26, 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 58th 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 59th Legislative Assembly be the same as that followed for the 58th Legislative Assembly.

Legislators' Computer Training

The committee approved the agenda for providing computer training to legislators before the convening of the 59th 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 training immediately after the organizational session adjourns and into Wednesday afternoon. 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 with limited computer experience is scheduled for Thursday, December 9.

During the organizational session, returning legislators can take 90-minute, concurrent miniclasses on e-mail and the Internet, similar to the miniclasses provided during the 2002 organizational session. The miniclasses are scheduled for Monday morning and afternoon, Tuesday morning and afternoon, and Wednesday afternoon.

Legislators can receive LAWS system training in any of three 2.5-hour blocks of instruction on Monday, January 3, the day before the regular session convenes. During the legislative session, legislators can request individualized training at their desks in the chambers and can receive individual online learning through Internet classes.

Legislators' Photographs

The committee approved the invitation to bid for photography services to the 59th 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 x 60 inches, proofed, framed, and ready to hang; and 97 copies of the composite picture 11 x 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 x 40 inches, proofed, framed, and ready to hang; and 51 copies of the composite picture 11 x 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 2004, 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 Wednesday, December 22, 2004, 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 18, 2005.

Although the invitation to bid was sent to 31 photography firms in western North Dakota, only one firm submitted a bid--Anderson Photography, Crosby, of $3,700. The committee awarded the contract to the bidder--Anderson Photography--the firm that was also the photographer for the 54th through 58th 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 and 2003 legislative sessions, 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.

Community Access Television informed the committee that Community Access would not be able to continue coverage of the Legislative Assembly during the 2005 legislative session. The reasons included poor production conditions, e.g., limited camera position options (a balcony view in each chamber) and technical incompatibility; cost of equipment, staff, and coordination; lack of available air time; and content value (inability to access committee meetings or otherwise determine timely issues). Although loss of video transmission over the public access channel would affect only cable subscribers in the Bismarck-Mandan area, loss of the video signal would eliminate the live video/audio streaming of the floor sessions on the Interactive Video Network and the Internet.

Community Access Television provided a proposal to the committee for providing a digital camera and camera operator to supply a video signal for web streaming over the Internet. The proposal was for one digital camcorder, tripod, and necessary cables, and a camera operator to be onsite for a minimum of two hours each day for a minimum of 80 days. The proposal also provided for the Legislative Assembly to provide daily, onsite guidance and direction for the camera operator as to daily start time, which activity to cover, and when to continue transmission beyond the two-hour daily minimum. The proposal was for $30 per hour labor (minimum of two hours per day for 80 days) and $50 per day equipment (minimum of 80 days).

The committee discussed the proposal with a focus on the importance of providing video coverage of the Legislative Assembly to the citizens of the state. Only the Senate and House chambers and Brynhild Haugland Room are wired for video input. Any other coverage of committee hearings would require wiring those locations. The committee discussed whether it could be more economical to employ individuals as camera operators rather than contract for such coverage. To some extent, concern was expressed over the coverage of debate if an individual employed on a partisan basis determined camera subjects and angles. There was little concern expressed over informing a camera operator as to the anticipated happenings each day. Of more concern was

the potential for partisan accusations regarding which issue was selected for coverage even though partisanship may not have been intended.

The committee recommends that the majority and minority leaders visit with representatives of Community Access Television to determine if arrangements can be made for a video signal for video/audio streaming over the Internet.

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.

The committee recommends continuation of the telephone message service on the same basis for the 59th Legislative Assembly as provided for the 58th 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 between December 1, 2004, and January 5, 2005, and authorized the Legislative Council staff to conduct training sessions for various session employees.

The training will be similar to that provided before the 2003 legislative session, except the assistant secretary of the Senate and the assistant chief clerk of the House rather than the bill clerks will receive training as backup to the journal reporters, the journal reporters rather than the bill clerks will receive training as backup to the assistant secretary of the Senate and assistant chief clerk of the House, the committee clerks will receive joint training over a one-week period rather than a separate week for House committee clerks and a separate week for Senate committee clerks, and the legislative interns will receive their training Wednesday and Thursday before the session convenes rather than after the session convenes. (In 2002 the bill clerks received training as backup for the assistant secretary of the Senate or assistant chief clerk of the House, the journal reporter, and 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.

Session Employee Positions

The committee reviewed the number of employee positions during the 1993, 1995, 1997, 1999, 2001, and 2003 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 contracting for secretarial, telephone message, and bill and journal room services rather than hiring employees for those areas.

The committee reviewed a legislative session employee position plan that provided for the same number of positions in the Senate and House during the 2005 legislative session as recommended for 2003. The plan continued the rotation of three positions between the Senate and House--payroll clerk, parking lot attendant, and information desk attendant. For the Senate, the plan provided for the information desk attendant and supply room coordinator to be Senate employees. For the House, the plan provided for the payroll clerk and parking lot attendant to be House employees. The plan discontinued the rotation of the supply room coordinator in favor of continuing the position as a Senate employee. This is intended to make that employee available for providing assistant sergeant-at-arms services during the Senate floor sessions as needed. As originally presented to the committee, the plan provided for 34 Senate employee positions and 40 House employee positions.

The committee recommends that the Employment Committees provide for 35 Senate employee positions and 40 House employee positions. The committee added a Senate page and bill book clerk to the original plan because discussion indicated that the two pages and bill book clerks in the Senate were insufficient at times, especially when distributing floor amendments.

Session Employee Compensation

The committee reviewed legislative session employee compensation levels during the 2003 legislative session. In 1999 a general increase of 7 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 5 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. In 2003 a general increase of

5 percent, rounded to the nearest dollar, was provided. This was primarily in recognition of the average pay increases of 3 percent and 2 percent approved by the 57th Legislative Assembly for state employees.

The committee recommends a general increase of 5 percent, rounded to the nearest dollar. This was primarily in recognition of the difficulty in attracting qualified applicants for session employment. As a result of this recommendation, compensation will range from $71 to $120 per day ($8.88 to $15 per hour based on an eight-hour day). The committee 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 identifying specific individuals. This type of resolution was first adopted in 1997 as a means to provide flexibility in the hiring of employees 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.

Secretarial Services

The Legislative Assembly privatized secretarial services in 1995 rather than employ stenographers and typists as 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 and each house employed a chief stenographer and payroll clerk at a cost of $14,326.59.

Since 1993, the number of employees as well as the cost of secretarial services has gone down each session. During the 2003 legislative session, Spherion provided four employees for a total cost of $23,634.13 and the Senate and House shared a part-time payroll clerk.

In 2003 the contractor's employees completed 157 speeches (and made 732 copies), 86 press releases (182 copies), 8 charts (34 copies), 424 letters (3,708 copies), 251 faxes (702 copies), 50 mail merges (4,471 copies), and 119 miscellaneous documents (2,631 copies). For comparison purposes, 237 speeches, 304 press releases, 36 charts, 1,080 letters, 601 faxes, 148 mail merges, and 193 miscellaneous documents were prepared in 2001.

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 5:00 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.

Bill and Journal Room Services

The Legislative Assembly privatized bill and journal room services in 1997 rather than employ bill and journal room attendants. In 1995 the Legislative Assembly employed 12 bill and journal room clerks at a cost of $57,170.61. During the 1997, 1999, and 2001 legislative sessions, the contractor that printed bills, resolutions, and journals provided bill and journal room services as part of the contract for printing bills, resolutions, and journals. During the 2001 legislative session, Quality Printing provided six employees for a total cost of $49,750. Under the consolidated contract for secretarial, telephone message, and bill and journal room services in 2003, Spherion provided five employees for bill and journal room services for a total cost of $29,559.59.

Telephone Message Service

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 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 2003 legislative session, 10,021 calls were received.

During the 2003 legislative session, Spherion provided nine telephone message service employees at a cost of $41,265.60.

Consolidated Secretarial, Telephone Message, and Bill Room Services

During the 1999-2000 interim, the committee recommended that telephone message and secretarial services be provided by the same contractor to determine if efficiencies could be obtained by moving employees from one area to the other as necessary. After the 2001 legislative session, the contractor described efficiencies

resulting from workload management between the two areas and suggested that there could be additional savings if employees could be assigned among three areas--secretarial, telephone message, and bill and journal room. For 2003 these services were 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.

The invitation to bid to provide combined secretarial, telephone message, and bill and journal room services during the 2003 legislative session continued the base level of service as in 2001--4 core employees for secretarial services, 9 telephone attendants for telephone message services, but 5 rather than 6 employees for bill and journal room services--for a total of 18 employees. The committee recommended accepting the bid by Spherion to provide combined secretarial, telephone message, and bill and journal room services for $1,532.56 per day.

After the 2003 legislative session, Spherion recommended additional cross-training for secretarial service employees to allow additional assignment to other areas and fewer total employees because of decreased workload and ability to transfer employees among the three areas as necessary.

The committee approved a consolidated bid to provide secretarial, telephone message, and bill and journal room services. The invitation to bid provided for 12 employees rather than 18--9 are to be in the secretarial and telephone message service area and 3 are to be in the bill and journal room area--for 75 legislative days. Three of the secretarial and telephone message service area employees are to be trained in secretarial services as well as telephone message, and during the first three weeks of the session the contractor is to be prepared to assign one or two employees from the secretarial and telephone message service area to the bill and journal room area to handle the workload during the bill introduction period. The invitation to bid also contained a specific description of how the contractor in 2003 billed less than the contract price due to flexible scheduling and workflow management--Spherion billed $1,221.73 per day rather than the bid price of $1,532.56 per day.

Because of the reduction in the total number of employees under the contract, the telephone message employees will be collocated with the secretarial service employees in the secretarial service area behind the Senate balcony.

With respect to bill and journal room services, at least one person is to organize and operate the bill and journal room Monday through Friday from December 13, 2004, through January 3, 2005, excluding Christmas Eve Day and New Year's Eve Day; at least one person is to be in the bill and journal room anytime either house is in session after 5:00 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 fax services to third parties upon payment of a fee set by the contractor and retained by the contractor. In 2003 the contractor reported receiving $411.25 for providing photocopy and fax services.

Secretarial, telephone message, and bill and journal room services are to be provided between 7:30 a.m. and 5:00 p.m. on each legislative day; and an account manager or liaison is to manage the communication process between the Legislative Council and specific area involved and with the contractor.

The invitation to bid to provide secretarial, telephone message, and bill and journal room services was sent to nine temporary personnel and secretarial services in the Bismarck-Mandan area. The committee received three bids. The daily bids were $1,044.48 by Spherion, $1,204.74 by Expressway Personnel, and $1,259.08 by Kelly Services. The hourly pay range in the Spherion bid is telephone message services - $7.75; bill and journal room services - $7.75 to $8.25; and secretarial and telephone message services - $8.25 to $8.75.

The committee recommends accepting the bid by Spherion, Bismarck, for providing secretarial, telephone message, and bill and journal room services during the 2005 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 2003 the stipend was in the amount of $5,425 ($1,550 per month) for the 3.5-month program.

The committee approved continuation of the program for the 59th Legislative Assembly at the same number as authorized in 2003 (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 $1,600 per month.

Legislative Tour Guide Program

For the past 14 legislative sessions, the Legislative Council has operated a tour guide program that coordinates tours of the Legislative Assembly by high school groups. The tour guide program is extensively used by high school groups during legislative sessions, 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 2005 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 2005 legislative session under the same arrangements as in the past. The association is planning to arrange two health screening days, with health professional staff from both local health care organizations checking blood pressure and cholesterol levels in January and April.

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 been involved as coordinators 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 2005 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, 2004, to schedule out-of-town clergy to give the opening prayer any day of the legislative session for their respective house during the 2005 legislative session.

Organizational Session Agenda

The committee approved a tentative agenda for the 2004 organizational session. Two major changes first made in 2002 were continued--convening the session on Monday rather than Tuesday and convening at 1:00 p.m. rather than 9:00 a.m. The convening of the organizational session on Monday in 2002 allowed additional time to update computers for new legislators, assign computers to new legislators, and provide computer training to new legislators. Convening the session at 1:00 p.m. allowed veteran legislators the opportunity to travel to the Capitol on Monday rather than during the evening of the previous day, while continuing to provide orientation to new legislators and computer training to veteran legislators beginning at 9:00 a.m.

In response to a suggestion for a presentation on sexual harassment, the committee approved the addition of a 15-minute presentation relating to sexual harassment to the Senate and the House immediately after the ethics presentations on Tuesday.

In response to a suggestion for a presentation on uniform laws, the committee approved the addition of a 15-minute presentation relating to uniform state laws to the joint session of the Senate and House immediately after the reports on recommendations of the Legislative Council on Tuesday.

The training sessions for legislators who have been assigned personal computers continue to be scheduled on tracks parallel to the orientation sessions received by freshman legislators. On the third day, just as in 2002, each house is scheduled to convene at 8:30 a.m. so the Governor's budget message can be presented at 10:00 a.m. and the Legislative Assembly can adjourn at 10:45 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.

Recommended Bill - Organizational Session

North Dakota Century Code Section 54-03.1-02 provides that in each even-numbered year on the first Tuesday after the first Monday in December or on a date selected by the Legislative Council, the members of the Legislative Assembly are to meet at the Capitol at 9:00 a.m. for the purpose of conducting an organizational session. Since 2002, the Legislative Council has selected Monday as the day for the convening of the organizational session and has set the convening time at 1:00 p.m., while the orientation sessions start at 9:00 a.m.

The committee recommends Senate Bill No. 2039 to amend NDCC Section 54-03.1-02 to provide that the organizational session will convene on the first Monday in December (rather than on the first Tuesday after the first Monday) or on a date selected by the Legislative Council. The bill updates that section to recognize that convening of the organizational session on Monday, rather than Tuesday, has become the norm. The bill also removes the reference to 9:00 a.m. as the time to meet. The time for convening the session would be set by the Legislative Council when the organizational session agenda is approved.

State of the State Address

During the 2003 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 2005 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 2005 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 through 2003 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 59th 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 7, 2005--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 days 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 10, 2005.

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, other than the amendment of Joint Rule 1001(3), reported earlier in this report, relating to elimination of a reference to two-year terms for members of the Legislative Assembly.

MISCELLANEOUS MATTERS

ConnectND 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. Of interest when the presentation was made to the committee was the potential for payroll periods for state employees to change from a monthly basis, paid on the first working day of the following month, to twice a month payroll periods, paid eight days after the pay period ends, or to some other option with a pay lag into the following pay period.

Information From Legislative Compensation Commission

The committee received information concerning recommendations being made by the Legislative Compensation Commission. The commission is recommending an increase in the maximum legislator lodging expense reimbursement allowed during legislative sessions, beginning in 2007, to $900 per month for licensed lodging establishments and to $750 per month for any other lodging and an increase in the state mileage reimbursement rate to 37.5 cents per mile.

NATURAL RESOURCES COMMITTEE

The Natural Resources Committee was assigned two studies. House Concurrent Resolution No. 3075 directed a study of federal and state statutory and regulatory policies that discourage or prevent final bond release applications from being filed and Public Service Commission regulatory policies that could be implemented to encourage flexibility in proving reclamation success and reducing administrative and regulatory burdens necessary for bond release applications and actions being undertaken by the mining companies to achieve final bond release. Senate Concurrent Resolution No. 4022 directed a study of proposed legislation permitting the Game and Fish Department to coordinate with game and fish programs conducted by the tribal governments of the federally recognized Indian tribes in North Dakota. The Legislative Council also assigned responsibility for overview of the Garrison Diversion Unit Project and related matters and any necessary discussions with adjacent states on water-related topics to the committee.

Committee members were Representatives John Warner (Chairman), Arden C. Anderson, LeRoy G. Bernstein, Tracy Boe, Glen Froseth, Lyle Hanson, Gil Herbel, Scot Kelsh, Darrell D. Nottestad, Todd Porter, and Dorvan Solberg and Senators Bill L. Bowman, Robert S. Erbele, Ronald Nichols, and Michael Polovitz.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2004. The Council accepted the report for submission to the 59th Legislative Assembly.

RELEASE OF COAL MINE RECLAMATION PERFORMANCE BOND STUDY

Coal Mining, Reclamation, and Bonding

North Dakota's coal resources are in the form of lignite--a low-grade, low-sulfur coal. Lignite was first mined in North Dakota by underground methods. This type of mining was gradually replaced by the safer and more economical method of mining called surface or strip mining, and all lignite mined in North Dakota since 1960 has been recovered by surface mining. There are six active coal mines in North Dakota. There are four large mines and two small mines that produce leonardite. The large mines are BNI Coal, Ltd.'s Center Mine, Dakota Westmoreland Corporation's Beulah Mine, Coteau Properties Company's Freedom Mine, and Falkirk Mining Company's Falkirk Mine. The Coteau Properties Company and Falkirk Mining Company are subsidiaries of The North American Coal Corporation. In addition to these mines, there are five other mines that have closed and remain permitted and bonded for reclamation purposes. These are the Gascoyne, Glenharold, Indian Head, Larson, and Royal Oak Mines.

Coal plays an important part in North Dakota's economy. The production for fiscal year 2001 was 30,550,000 tons, compared to 16,750,000 tons in 1980 and 5,000,000 tons in 1970. Most of this coal is burned to generate electricity and for conversion to synthetic natural gas.

Surface coal mining operators in North Dakota must supply a performance bond before the Public Service Commission will issue a mining permit. The reason for requiring a performance bond is to ensure that land disturbed for coal mining will be reclaimed at no cost to the state or to the public in the event an operator's mining permit is revoked or the operator goes out of business. The commission accepts several kinds of performance bonds, including surety, collateral, self-bonding, or a combination of these types. Following removal of the coal resource, the land must be returned to its premined level of productivity before the mining operator will be released from liability. This is usually accomplished through proof of successful revegetation of the mined lands, and the revegetation requirement must be satisfied before the mine operator or permittee will be relieved of that person's legal liability to reclaim the land.

Since July 1, 1975, North Dakota law has required that reclaimed lands designated for agricultural purposes be restored to a level of productivity equal to or greater than that which existed before mining. Since July 1, 1979, all land disturbed for coal mining is subject to a 10-year period of responsibility for successful revegetation.

The performance bond normally is released incrementally. Up to 40 percent of the bond may be released on disturbed acreage following the backfilling, grading, and establishment of drainage control on the acreage. Another 20 percent may be released following the respreading of subsoil and topsoil. An additional amount of bond may be released once vegetation has been established, but enough bond must be retained to cover the costs of reseeding or minor erosion control during the 10-year period of responsibility for successful revegetation should that be necessary. When the mine operator has successfully completed all requirements of the regulatory program and has completed the 10-year period of responsibility, the Public Service Commission may release the remaining performance bond. Mining companies must show that lands reclaimed to agricultural use produce at least as much as the land did before mining.

Surface mining and reclamation operations are governed by North Dakota Century Code (NDCC) Chapter 38-14.1. Section 38-14.1-01 provides the declaration of findings and intent and provides that the Legislative Assembly finds and declares that many surface coal mining operations may result in disturbances of surface areas that adversely affect the public welfare by diminishing the utility of land for commercial, industrial, residential, cultural, educational, scientific, recreational, agricultural, and forestry purposes, by causing erosion, by polluting the water, by destroying fish and wildlife habitats, by impairing natural beauty, by damaging the property of citizens, by creating hazards dangerous to life and property, by degrading the quality of life in local

communities, and by counteracting governmental programs and efforts to conserve soil, water, other natural resources, and cultural resources. This section provides that the expansion of coal mining to meet the nation's energy needs makes even more urgent the establishment of appropriate standards to minimize damage to the environment and to productivity of the soil and to protect the health and safety of the public. This section states that surface mining and reclamation technology as now developed require effective and reasonable regulation of surface coal mining operations in accordance with the requirements of Chapter 38-14.1 to minimize so far as practicable the adverse social, economic, and environmental effects of such mining operations. This section provides further that surface coal mining operations contribute to the economic well-being, security, and general welfare of the state and should be conducted in an environmentally sound manner and that surface coal mining and reclamation operations should be so conducted as to aid in maintaining and improving the tax base, to provide for the conservation, development, management, and appropriate use of all the natural resources of affected areas for compatible multiple purposes, and to ensure the restoration of affected lands designated for agricultural purposes to the level of productivity equal to or greater than that which existed in the permit area prior to mining. Finally, this section provides that warrantless inspections are necessary in this state to ensure effective enforcement of surface coal mining and reclamation operation requirements.

North Dakota Century Code Section 38-14.1-10 provides that it is unlawful for any operator to engage in surface coal mining operations without first obtaining from the commission a permit to do so. Section 38-14.1-16 requires a performance bond and establishes the amount and sufficiency of the required surety. This section provides that as part of a surface coal mining and reclamation permit application, the permit applicant must file with the Public Service Commission, on a form prescribed and furnished by the commission, a bond for performance payable to the state of North Dakota and conditioned upon faithful performance of all the requirements of Chapter 38-14.1 and the requirements of all rules adopted pursuant to Chapter 38-14.1 and all permit terms and conditions. The commission is required to set the bond amount sufficient to complete the reclamation plan in the event of forfeiture. The bond for the permit area must be at least $10,000. The bond must cover that area of land within the permit area upon which the permittee will initiate and conduct surface coal mining and reclamation operations for the ensuing year. Before initiating and conducting succeeding increments of surface coal mining and reclamation operations within the permit area, the permittee must file with the commission an additional bond or bonds to cover the increments in accordance with Section 38-14.1-16. Liability under the bond, subject to allowable releases, is for the duration of the surface coal mining reclamation operation and for a period coincident with the permittee's responsibility for revegetation requirements and until such time as the lands included in the surface coal mining operation have been approved and released by the commission. The bond must be executed by the permit applicant and a corporate surety licensed to do business in North Dakota, except that the permit applicant may elect to deposit cash, negotiable bonds of the United States or of North Dakota, or negotiable certificates of deposit of any bank organized or transacting business in the state. The cash deposit or market value of the securities must be equal to or greater than the amount of the bond required for the bonded area. Cash or securities deposited must be deposited upon the same terms as the terms upon which surety bonds may be deposited. The securities are security for the repayment of the negotiable certificate of deposit. A bond filed for areas not yet affected by surface coal mining and reclamation operations may not be canceled by the surety unless it gives not less than 90 days' notice to the commission. For lands on which surface coal mining and reclamation operations are being conducted, the bond may not be canceled by the surety unless a substitute surety assuming liability from the initiation of the operations is obtained and is approved by the commission. If the corporate surety's license is suspended or revoked, the permittee, after notice from the commission, must provide a substitute performance bond. If the permittee fails to make substitution within 30 days, the commission may suspend the permit. If substitution is not made within 90 days, the commission is required to suspend the permit. The commission may accept the bond of the permit applicant itself without separate surety when a permit applicant demonstrates to the satisfaction of the commission the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond such amount. The amount of the bond or deposit required and the terms of each acceptance of the permit applicant's bond must be adjusted by the commission from time to time as acreages affected by surface coal mining operations are increased or decreased or if the cost of future reclamation changes. The amount of any forfeiture of the bond or security must be the amount prescribed in the permit for each acre or portion thereof on which surface coal mining and reclamation operations are being conducted.

North Dakota Century Code Section 38-14.1-17 governs the release of performance bonds. A permittee may file a request with the Public Service Commission for the release of all or part of a performance bond or deposit furnished subsequent to July 1, 1975. As part of any bond release application, the permittee must submit within 30 days after filing the request a copy of an advertisement placed at least once a week for four successive weeks in the official newspaper of each county in which the surface coal mining operation is located and in other daily newspapers of general circulation in the locality of the surface coal mining operation. The advertisement must contain notification of the precise location and the number of acres of land affected, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and approximate

dates of reclamation work performed and a description of the results achieved as they relate to the permittee's approved reclamation plan, and the right to file written objections and to request a public hearing or an informal conference. The permittee is also required to submit copies of letters that the permittee has sent to all owners of surface rights within the permit area proposed for bond release, to all owners of subsurface rights within the permit area proposed for bond release, to adjoining property owners, to certain state agencies, to heads of local governmental bodies, including the county commissioners and mayors of municipalities, to planning agencies, to sewage and water treatment authorities, and to water companies in the locality in which the surface coal mining and reclamation operations took place, notifying them of the permittee's intention to seek release from the bond. The letters must also contain notice of the right to file written objections and request an informal conference or a public hearing.

North Dakota Century Code Section 38-14.1-17 provides further that a person having a valid legal interest that is or may be adversely affected by release of the bond or the responsible officer or head of any state or local governmental agency that has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the surface coal mining operation, or is authorized to develop and enforce environmental standards with respect to the operations, has the right to file written objections to the proposed release from bond with the commission and to request an informal conference or a public hearing within 30 days after the last publication of the notice. Upon receipt of the application for bond release, the commission is required, within 30 days, to conduct an inspection and evaluation of the reclamation work involved. The evaluation must consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of continuance or future occurrence of such pollution, the estimated cost of abating such pollution, the effectiveness of soil erosion control measures employed, and the level of bonding. The commission is then required to make written findings with its rulings to release or not to release all or part of the performance bond or deposit within 60 days from the filing of the request for bond release, if no informal conference or public hearing is held, and if there has been an informal conference or a public hearing, within 30 days thereafter. Section 38-14.1-17(4) provides that the foregoing time periods do not apply if effective inspections cannot be carried out because of inclement weather.

If the commission disapproves the application for release of the bond or portion thereof, the commission is required to state the reasons for disapproval, recommend corrective actions necessary to secure the release, and provide the permittee with an opportunity for a formal public hearing. If the commission decides to release the bond either totally or in part, the commission must notify the county commissioners and the mayors of the municipalities in the county in which the applicable surface coal mining operation is located by certified mail at least 30 days before the actual release of all or a portion of the bond. Finally, the commission may release bond as follows:

- When the permittee completes the backfilling, regrading, and drainage control in a bonded area, 40 percent of the bond for the area may be released.
- After spreading suitable plant growth material or other suitable strata on the regraded land, 20 percent of the bond for the area may be released.
- After vegetation is established on the regraded land, additional bond may be released. The commission is required to retain sufficient bond to cover third-party revegetation and associated costs for 10 years, provided there may not be a release until certain environmental protection performance standards are met and prime farmlands are returned to productivity equal to or greater than nonmined prime farmland in the surrounding area under equivalent management practices and if there is a permanent silt dam impoundment, bond may be released if the commission approves the commitments for future maintenance.
- When the permittee has successfully completed all surface coal mining and reclamation operations, and after the period set by NDCC Section 38-14.1-24(18), which is 10 years, the remaining bond may be released. No bond may be fully released until all reclamation requirements are met.

Control of the affected lands remains in the commission, and the commission may not allow use of the land which is inconsistent with reclamation until reclamation has been accomplished to the satisfaction of the commission and until the bond has been fully released.

The 10-year successful revegetation requirement contained in NDCC Section 38-14.1-24(18) is required by the federal Surface Mining Control and Reclamation Act. The Surface Mining Control and Reclamation Act requires that, as a prerequisite for obtaining a coal mining permit, a person must post a reclamation bond to ensure that the regulatory authority will have funds to reclaim the site if the permittee fails to complete the reclamation plan approved in the permit. Section 515 of the Surface Mining Control and Reclamation Act (30 U.S.C. 1265) provides that any permit issued under any approved state or federal program pursuant to the Surface Mining Control and Reclamation Act to conduct surface coal mining operations must require that the surface coal mining operations will meet all applicable performance standards of the Act and such other requirements as the regulatory authority may issue. General performance standards are applicable to all surface coal mining and reclamation operations and must require the operation as a minimum to assume the responsibility for successful revegetation for a period of

five full years after the last year of augmented seeding, fertilizing, irrigation, or other work except in those areas or regions of the country where the annual average precipitation is 26 inches or less, then the operator's assumption of responsibility and liability will extend for a period of 10 full years after the last year of augmented seeding, fertilizing, irrigation, or other work.

Coal Mining Exception to Corporate Farming Law

Testimony relating to House Concurrent Resolution No. 3075 indicated that since nothing in state or federal law requires mining companies to apply for final bond release on strip-mined lands they have reclaimed, the mining companies are violating the spirit of the corporate or limited liability company farming law. However, NDCC Section 10-06.1-06 provides a specific exemption from the corporate or limited liability company farming law for surface coal mining. This section provides that a corporation or limited liability company not engaged in the business of farming or ranching may own or lease lands used for farming or ranching, when the business of the corporation or limited liability company is the conducting of surface coal mining operations or related energy conversion, and when the owning or leasing of lands used for farming or ranching is reasonably necessary in the conduct of the business of surface coal mining or related energy conversion. This section provides further that when the necessity for owning or leasing the lands used for farming or ranching no longer exists, the exception provided in this section ceases and the corporation or limited liability company owning or leasing the lands is subject to Chapter 10-06.1.

2003 Proposed Legislation

The 58th Legislative Assembly (2003) considered a bill relating to coal mine reclamation. House Bill No. 1470, which failed to pass the House, would have provided that for reclaimed tracts that are 80 acres or larger and have an agriculture postmining land use, the permittee must prepare for final bond release by beginning vegetation measurements for proving reclamation success no later than the eighth year of the 10-year period of revegetation responsibility. The beginning of the 10-year responsibility period for this requirement would have been based on the latest date that any area within the tract was initially planted; however, the permittee would also have to have applied for any variances that were available to expedite the final bond release process. Once the vegetation measurements had shown that the reclamation success standards had been met and the 10-year responsibility period had ended, the permittee would have been required to submit an application for final bond release during the growing season of the following year. The bill also would have provided that if the permittee did not submit an application for final bond release as required, the Public Service Commission would have been required to assess the permittee an annual fee. The fee would have been $25 an acre the first year the eligible lands were not bond-released, and the fee would have increased $5 per acre for each successive year until final bond release was obtained.

Testimony and Committee Activities

The committee received testimony from Public Service Commission staff to the effect that approximately 2,000 acres of land are disturbed each year by surface mining activities. A similar number of acres is reclaimed in most years. The total acreage under permit for surface coal mining is approximately 94,000 acres. All but a very small amount of this acreage has been permitted under the current reclamation law, which became effective in 1979 after the federal reclamation law was enacted in 1977. Public Service Commission staff estimated that 53,000 acres have been mined or otherwise used in support of surface mining since 1979. Of this total, approximately 34,000 acres have been reclaimed. Over 18,000 acres are being used for active mining operations or long-term facilities, such as roads, soil stockpiles, sedimentation ponds, and other surface mining support activities. Another 1,000 acres are under active reclamation. Of the 34,000 acres that have been reclaimed, Public Service Commission staff reported that 5,129 acres have received final bond release. Public Service Commission staff estimated that approximately 12,000 acres have been seeded for 10 years or more.

Public Service Commission staff reported that in addition to the 5,129 acres that have received final bond release under the current reclamation law, over 5,700 acres that were mined under the earlier state reclamation laws have received final bond release. All but approximately 600 acres mined under the earlier state reclamation laws have received final bond release. Most of the unreleased acreage is adjacent to roads or other facilities that support post-1979 mining activities.

Since January 1, 2003, the Public Service Commission has approved bond release on 2,008 acres of land at five mines. Of this total, 1,614 acres are reclaimed lands that had been disturbed by mining activities. The remaining 394 acres were undisturbed lands adjacent to the reclaimed lands. Pending applications for final bond release total another 1,537 acres at five mines. Public Service Commission staff reported these applications should be approved before December 31, 2004, and Public Service Commission staff expect more applications for final bond release this year.

Public Service Commission staff reported that the commission has undertaken a number of steps to encourage mining companies to apply for final bond release. The Public Service Commission and the Lignite Energy Council proposed that the statutory requirement that bond release notices be sent to mineral owners be deleted. Federal law only requires that bond release notices be sent to surface owners. Another proposed statutory change identified by Public Service Commission staff was to delete the statutory requirement that bond release notices be published in daily newspapers of general circulation in the locality of the mine. Federal

law only requires that the notice be published in a newspaper of general circulation near the mine.

Public Service Commission staff reported that Public Service Commission Policy Memorandum No. 20 to Mine Operators is being updated. The commission adopted the policy to allow variances from the 10-year revegetation responsibility period for areas affected by sedimentation ponds and related support facilities. The policy allows the revegetation liability period for the ponds and related areas to be combined with that of the surrounding reclamation tract. The policy is intended to help expedite the bond release process since sedimentation ponds usually remain in place for at least two years after the surrounding watershed is reclaimed. Changes to the policy were proposed to allow variances for small tracts that were mined or used for haul roads. As part of a request for variances for areas other than water management structures, mining companies would be required to provide an explanation as to why reclamation on the proposed variance area was not completed at the same time the adjoining areas were reclaimed and to explain potential obstacles and bond release delays if a variance were not granted. The policy currently states the size of variance areas should generally not exceed 20 percent of the acreage in the surrounding reclamation tract. Public Service Commission staff reported that additional language will be added to the policy to allow the commission to grant variances for a larger percentage on a case-by-case basis.

Public Service Commission staff reported that the Reclamation Division of the commission has developed a new policy for repermitting bond-released lands if a released tract is later needed to support ongoing mining operations--Public Service Commission Policy Memorandum No. 22 to Mine Operators. If a mining company shows a need to repermit bond-released lands, the mining company will most likely add that acreage to an existing permit. The mining company will have to provide a summary of the reclamation activities that were previously carried out in the bond-released tract, including land uses, topsoil and subsoil thicknesses that were previously respread; the specific revegetation success standards that apply to the tract; and the final postmining topographic map. The appropriate mining and reclamation plans will also have to be provided.

Public Service Commission staff reported that the Reclamation Division will allow mining companies to publish a combined newspaper notice when partial bond release is requested as part of a permit renewal application. This procedure will reduce costs for publishing notices.

Public Service Commission staff reported that the Reclamation Division staff plans to meet with each mining company to discuss bond release plans and to identify potential bond release tracts that appear to be logical management units. The emphasis of these meetings will be to discuss bond release plans for reclaimed tracts that are nearing the end of the 10-year liability period.

Public Service Commission staff reported that during the annual evaluation period ending June 30, 2003, federal Office of Surface Mining staff found only one-quarter section of reclaimed land where all of the tracts in that quarter had been seeded for 10 years or more. All other tracts of one-quarter section in size contained lands that were not eligible for bond release. Most of these tracts were broken up by mine haul roads and access roads, topsoil stockpiles, or temporary sedimentation ponds. In addition, some tracts contained tree planting, which did not meet the minimum 10-year liability period. In summary, Public Service Commission staff reported that mining companies are making progress pursuing final bond release on manageable units that are eligible for bond release. Public Service Commission staff reported that, considering the amount of vegetation data that is required and associated costs, it generally appears mining companies will not request final bond release until all reclaimed tracts within a quarter section of land become eligible for release based on the expiration of the 10-year liability period.

The committee received testimony from representatives of the Falkirk Mining Company that the Falkirk Mine has 23,000 acres under permit with 45 percent of this acreage undisturbed, 28 percent of the acreage reclaimed, and 27 percent of the acreage disturbed. As mines develop, the permitted areas closest to the mine buildings and power plant are mined and reclaimed first. However, facilities must be left in place on the reclaimed land that may be eligible for bond release in order to facilitate mining on land further from the mine buildings and power plant. Thus, representatives of Falkirk Mining Company testified mine operators cannot apply for bond release on this land because the land must be used for access to land being mined further from the mine buildings and power plants. The committee received testimony that at the Falkirk Mine there is not a complete quarter section that does not have an access road, haul road, or sedimentation pond on it, making these lands inappropriate for bond release applications.

The committee received testimony from representatives of Coteau Properties Company's Freedom Mine that the tracts at the Freedom Mine that have been reclaimed for more than 10 years are located nearest the power plant and the coal gasification plant because these lands were mined first. However, the company must maintain access to these lands to ship coal from the more recently mined areas to the power plant and the coal gasification plant. In addition, reasons for not applying for bond release include the irregular shape of the tracts, difficulty of access, and the fact that the tracts are within an active mine.

The committee received testimony from representatives of BNI Coal, Ltd.'s Center Mine that that company prefers to wait until an entire field is reclaimed for the 10-year period before applying for bond release on that field. The committee received testimony from representatives of Dakota Westmoreland Corporation that the company has applied for bond release at its Beulah Mine on the one area of the mine that comprises a contiguous

160-acre tract that has been reclaimed for 10 years. Other areas that have been reclaimed for 10 years lie along access roads or contain stockpiles or sedimentation ponds and it would be difficult to apply for bond release on these tracts because they are necessary for mining operations.

The committee received testimony from representatives of the Dakota Resource Council that some method should be developed to encourage or require mine operators to release reclaimed lands as soon as the 10-year reclamation period expires and that mining companies should be encouraged to develop mining plans that do not leave areas within reclaimed areas to justify the delay of bond release applications.

Committee Considerations

The committee considered a bill draft that deleted the requirement that the request for bond release be published in other daily newspapers of general circulation in the locality of the surface coal mining operation in addition to the official newspaper of the county and that subsurface owners within the permit area proposed for bond release be notified.

The committee received information from Public Service Commission staff that North Dakota provisions require that the bond release notice be published in the official county newspaper and a daily newspaper of general circulation in the locality of the mine. However, federal provisions only require the notice to be published in a newspaper of general circulation in the locality of the mine. Therefore, North Dakota's provisions place an additional requirement on mining companies to publish the notice in two newspapers rather than one. Also, North Dakota provisions on the notice mining companies must send to property owners and government agencies on plans to seek bond release include more owners and state agencies than the counterpart federal provisions. State law requires notice be sent to surface and subsurface owners within the permit area proposed for bond release and state agencies that are listed as advisory committee members.

The committee received testimony from a member of the Public Service Commission that the commission supports the bill draft and testimony from the president of the Lignite Energy Council that the council supports the bill draft.

The committee considered a bill draft that would have provided that for reclaimed tracts that are 80 acres or larger and have an agricultural postmining land use, the permittee must prepare for final bond release by beginning vegetation measurements for proving reclamation success no later than the eighth year of the 10-year period of revegetation responsibility. The beginning of the 10-year responsibility period for this requirement must be based on the latest date that any area within the tract was initially planted; however, the permittee must also apply for any variances that are available to expedite the final bond release process. Once the vegetation measurements show that the reclamation success standards are met and the 10-year responsibility period has ended, the permittee must submit an application for final bond release during the growing season of the following year. If the permittee does not submit an application for final bond release, the Public Service Commission would have been required to assess the permittee an annual fee. The fee would have been $25 per acre the first year that eligible lands are not bond-released and the fee would have increased $5 per acre for each successive year until final bond release was obtained.

The committee received testimony from representatives of the Dakota Resource Council that the bill draft would encourage surface mining companies to apply for final bond release in a more timely manner. The bill draft was opposed by the Lignite Energy Council. Representatives of the council testified that the bill draft would be counterproductive in expediting bond release by requiring a permittee to submit a final bond release application in a certain timeframe regardless of what the operational situation was and regardless of quarter section or larger reclamation tract planning that is occurring within the mine. Representatives of the council testified the bill draft was impractical as it breaks up one-half section or section fields into 80-acre tracts; is costly in that more data and more applications from industry and more review time by regulators would be required as smaller bond release areas are required; that release of one 80-acre tract could cause delays in other tracts because of additional water management structures being required; and the bill draft would require farmers to determine yield data by 80-acre tracts versus fields that are laid out to accommodate changes in topography, drainage systems, and other site-specific conditions. Representatives of the Lignite Energy Council testified that the bill draft would add unnecessary costs to the industry of over one-half million dollars per biennium.

Representatives of the Lignite Energy Council testified that significant progress was being made before the 2003 legislative session and continues to be made in reducing unnecessary costs, increasing flexibility, and encouraging bond release. They noted that the Public Service Commission has completed several regulatory initiatives and that others are in progress, including revising rules on data collection, revising rules on native grasslands standards, changing boundary informational requirements for partial bond release, revising Policy Memorandum No. 20 to provide increased flexibility in the release of associated disturbances that are greater than 20 percent of the reclamation tract, allowing flexibility to the operator so that it is not necessary to use the last year of data which is before the federal Office of Surface Mining for approval, reducing the amount of information required for repermitting which is before the Public Service Commission, as well as other regulatory changes under review. These representatives noted that between January 2003 and April 2004 an additional 2,000 acres of land had been released from bond at five mines while another 1,500 acres are pending before the Public Service Commission.

Two members of the Public Service Commission testified in opposition to the bill draft. They testified that there is no evidence to suggest there is widespread

hoarding of land under bond by North Dakota's coal companies and that while there are acres that have been reclaimed for a number of years and which are still under bond, the commission has found that there are almost always sound reasons the bond has not been released. In some cases, the commissioners testified, the land is an oddly shaped parcel that is unsuitable for sale until adjacent land is reclaimed and that in other cases the land is held under bond because future mine plans necessitate further use of the land. The commissioners testified it is unlikely that there is an incentive for mining companies to hoard land because the faster they can release the land, the quicker their liability ends.

Representatives of the Dakota Resource Council testified that nearly 12,000 acres of reclaimed land at active and inactive mines are fully reclaimed but only a small number of acres of agricultural land has been returned to private hands. They testified the bill draft would provide an incentive for mining companies to expedite bond release applications.

The committee considered a bill draft that would have provided that in addition to the annual map that must be submitted by a mine operator to the Public Service Commission for each year of the permit term and until the total bond amount has been released, that not later than September 1, 2005, each mine operator would have to submit a map to the commission indicating parcels of reclaimed land for which the operator intends to apply for final bond release during the 12-month period immediately subsequent to the report. The bill draft would have provided further that for active mines, the total acreage of these parcels could not be less than the total acreage disturbed during the immediately preceding 12 months and that for inactive mines, the total acreage of these parcels could not be less than 25 percent of all land eligible for final bond release or 10 percent of the total remaining acreage. The bill draft also would have provided that before October 1, 2006, the commission would have to submit to the Legislative Council a report on the progress of mine operators in applying for final bond releases.

Representatives of the Dakota Resource Council testified the bill draft would serve to notify the Public Service Commission as well as the public of acreage that has been through the 10-year revegetation reclamation process and is eligible for final bond release and encourage mining companies to apply for final bond release as soon as possible in order that the land may be returned to farm and ranch operators.

The bill draft was supported by a member of the Public Service Commission who indicated that it would be very helpful to have a requirement in state law that serves to focus the mining company's attention on final bond release on a yearly basis. The commissioner testified that an annual map would provide helpful information to the commission and would provide a document that would be helpful to the public as well. However, the commissioner said the bill draft should be amended to provide that not later than September 1, 2005, and each year thereafter, each operator should be required to submit a map to the commission indicating parcels of reclaimed land for which the operator intends to apply for final bond release during the 36-month period immediately subsequent to the report. The commissioner testified that inserting a 36-month planning period would allow mining companies to group bond-release properties together in logical parcels.

The Lignite Energy Council opposed the bill draft. A representative of the Lignite Energy Council testified that mine operators are already required to submit maps to the commission indicating parcels of reclaimed land for which each operator intends to apply for final bond release, that establishing a percentage of lands to be released each year is arbitrary and impractical, and that requiring the Public Service Commission to report to the Legislative Council is administratively burdensome.

Two members of the Public Service Commission testified in opposition to the bill draft. The commissioners testified that requiring mining companies to submit a map to the commission indicating the reclaimed lands that a mine operator intends to apply for final bond release during the next 12-month period is not necessary because the commission has the rulemaking authority to require mining companies to file such plans if the commission deems it necessary. The commissioners testified that requiring the Public Service Commission to report to the Legislative Council is not necessary as such reports could be requested by the Legislative Council at any time.

Recommendation

The committee recommends Senate Bill No. 2040 to delete the requirement that a request for bond release be published in other daily newspapers of general circulation in the locality of the surface coal mining operation in addition to the official newspaper of the county and that subsurface owners within the permit area proposed for bond release be notified.

TRIBAL GAME AND FISH COORDINATION STUDY

Background

Senate Concurrent Resolution No. 4022 reflected the Legislative Assembly's concern that the various tribal governments of the federally recognized Indian tribes within North Dakota assert a federally recognized right to regulate hunting and fishing within the reservations set aside for their benefit and have established game and fish departments that assist in that regulation and that various issues have arisen between the state Game and Fish Department and the Indian tribes regarding such issues as jurisdiction, recognition of tribal and state hunting and fishing permits, and coordination of activities such as hunting and fishing seasons, among others, and that it would be desirable to resolve these issues, if at all possible.

State Ownership of Wildlife

North Dakota Century Code Section 20.1-01-03 provides that the ownership and title to all wildlife in this state is in the state for the purpose of regulating the enjoyment, use, possession, disposition, and conservation of the wildlife and for maintaining action for damages. A person catching, killing, taking, trapping, or possessing any wildlife protected by law at any time or in any manner is deemed to have consented that the title to the wildlife remains in the state for the purpose of regulating the taking, use, possession, and disposition of the wildlife. This section provides that the state, through the Attorney General's office, may institute and maintain any acts for damages against any person who unlawfully causes, or has caused within this state, the death, destruction, or injury of wildlife, except as may be authorized by law.

The state has a property interest in all protected wildlife. This interest supports a civil action for damages for the unlawful destruction of wildlife by willful or grossly negligent act or omission. The United States Supreme Court in *Geer v. Connecticut*, 161 U.S. 519, 530 (quoting *State v. Rodman*, 59 N.W. 1098, 1099 (Minn. 1894)), stated that "[w]e take it to be the correct doctrine in this country that the ownership of wild animals, so far as they are capable of ownership, is in the state, not as proprietor but in its sovereign capacity, as a representative and for the benefit of all its people in common." In *Lacoste v. Department of Conservation*, 263 U.S. 545, 551 (1924), the United States Supreme Court said that protection of fish and wildlife "is particularly within the police power and the state has great latitude in determining what means are appropriate for its protection." However, state regulation of fish and wildlife must yield when it conflicts or interferes with federal law. Treaties and other federal laws that guarantee Indian hunting or fishing rights may preempt state police powers under the supremacy clause of the United States Constitution.

Regulation of Game and Fish in Indian Country

Indian rights to hunt and fish, and tribal power to regulate hunting and fishing, may arise from treaties, statutes, judicial decisions, executive orders, or agreements. The *American Indian Law Desk Book* published by the Association of Western Attorneys General notes that a treaty or other federal law creating a reservation may provide for exclusive tribal use and occupancy of the reserved lands, from which courts have inferred a tribe's power to exclude others from those lands. Therefore, within Indian reservations, tribal hunting and fishing rights and regulatory powers arise generally from the federal law creating the reservation and the tribal power of exclusion. Indian rights outside reservation boundaries typically arise from a specific federal law that reserves or creates such off-reservation rights.

Outside reservation boundaries, the issue is whether tribal members have federally protected hunting or fishing rights and, if so, the extent to which state law may be applied to their activities. The *American Indian Law Desk Book* notes that tribal members seldom are subject to state fish and game laws when hunting or fishing on lands reserved for the tribe. However, there is an exception to this general rule. The exception is when state regulation is necessary for conservation of the resource. The *American Indian Law Desk Book* notes that states presumptively have jurisdiction over nonmember conduct on reservations when the conduct does not occur on tribal lands. Generally, states have full police powers outside Indian country.

Concerning state regulation of off-reservation hunting and fishing, an Indian tribe or its members may assert hunting or fishing rights within an area that once was a part of the tribe's reservation or aboriginal territory. However, even when a federally secured off-reservation hunting and fishing right exists, its exercise may be subject to some measure of state regulation. These include state health and safety regulations that do not otherwise prevent the exercise of off-reservation treaty rights provided they are nondiscriminatory or not banned by express federal regulation and necessary conservation measures designed to conserve fish and game resources.

Game and Fish Department Position Paper

The Game and Fish Department has issued a position paper on hunting and fishing within the external boundaries of North Dakota Indian reservations. This paper provides that the department recognizes tribal self-governance and the protocols of a government-to-government relationship with Indian tribes and recognizes that Indian tribes are governmental sovereigns. Inherent in this sovereign authority is the power to make and enforce laws, administer justice, manage and control Indian lands, exercise tribal rights, and protect tribal trust resources. The position paper provides that Indian lands are not state public lands nor part of the public domain and are not subject to state public land laws. Indian lands are retained by tribes or were set aside for tribal use pursuant to treaties, statutes, judicial decisions, executive orders, or agreements. These lands are managed by Indian tribes in accordance with tribal goals and objectives, within the framework of applicable laws.

However, the position paper provides that because of the checkerboard nature of reservations in North Dakota, people need to be acutely aware of the obligation to nonmembers or at least non-Indians who happen to own land in fee title or live within Indian reservations. These nonmembers have the right to be governed by the state, not the tribe, and to enjoy the privileges provided by state law, such as the right to certain property rights, licenses, landowner preference, and free hunting privileges on their own land. The right to regulate those fee lands, and to assure that those individuals enjoy the same privileges and state services as are afforded other residents of the state, must be protected. The position paper states that it has always been the position of the state of North Dakota that the department has jurisdiction in wildlife-related matters throughout the state over all its citizens and any visitors within the state's boundaries.

Concerning tribal hunting and fishing licenses issued to nonmembers, the position paper provides that the department regards these as "trespass fees" to allow nonmembers to use Indian trust lands and that non-Indians must possess a valid state license and federal waterfowl stamp, if hunting migratory waterfowl, when hunting or fishing on any land within the exterior boundaries of a reservation, and must abide by state and federal law and related proclamations.

Finally, the position paper provides that as a practical matter, not related to jurisdictional activity, members of a tribe are allowed to hunt or fish, according to tribal game and fish code and related proclamations, anywhere within the exterior boundaries of a reservation, without state licenses. However, when hunting or fishing on deeded land, tribal members must obtain permission of the landowner if the land is posted to prohibit hunting or fishing. In addition, if wildlife is removed from a reservation for processing or other reasons, it must be tagged so as to indicate it was taken on the reservation according to tribal regulations.

Concerning enforcement of game and fish laws, the position paper provides that when a law enforcement officer discovers or responds to a complaint of violation of state law or tribal law on any land inside a reservation boundary and the violator is an enrolled member or a nonmember Indian, the violation will be turned over to tribal officers for prosecution. The position paper provides that if tribal law does not cover the violation, the state reserves the right to prosecute the violation in state court. When tribal officers encounter non-Indians who are in violation of state law on land within a reservation, they are to refer the individual to state or federal officers. Non-Indians found in violation of tribal law will be referred to federal officers. Finally, the position paper concludes by stating that nothing in these procedures is intended to acquire or relinquish jurisdiction over anyone by the state or a tribe.

State-Tribal Cooperative Agreements

North Dakota Century Code Chapter 54-40.2 provides for agreements between public agencies and Indian tribes. "Public agency" means any political subdivision, including municipalities, counties, school districts, and any agency or department of North Dakota. "Tribal government" means the officially recognized government of an Indian tribe, nation, or other organized group or community located in North Dakota exercising self-government powers and recognized as eligible for services provided by the United States, but does not include an entity owned, organized, or chartered by a tribe which exists as a separate entity authorized by a tribe to enter agreements of any kind without further approval by the government of the tribe.

Section 54-40.2-02 provides that any one or more public agencies may enter an agreement with any one or more tribal governments to perform any administrative service, activity, or undertaking that any of the public agencies or tribal governments is authorized to perform by law and to resolve any dispute in accordance with Chapter 54-40.2 or any other law that authorizes a public agency to enter an agreement.

Section 54-40.2-03.1 provides that after the parties to an agreement have agreed to its contents, the state agency involved is required to publish a notice containing a summary of the agreement in the official newspaper of each county of the state reasonably expected to be affected by the agreement. The notice must also be published in any newspaper of general circulation for the benefit of any members of the tribe affected by the agreement. The notice must also be posted plainly at the tribal office of any tribe affected by the agreement and in the county court of any county affected by the agreement. The notice must state that the state agency will hold a public hearing concerning the agreement upon the request of any resident of the county in which the notice is published if the request is made within 30 days of the publication of the notice.

Section 54-40.2-03.2 provides that if a state agency receives a request pursuant to Section 54-40.2-03.1, the state agency is required to hold a public hearing before submitting the agreement to the Governor, at which any person interested in the agreement may be heard. Notice of the time, place, and purpose of the hearing must be published before the hearing in the official newspaper of each county of the state reasonably expected to be affected by the agreement. The notice of the public hearing must also be published in a newspaper of general circulation published for the benefit of the members of any tribe affected by the agreement. The notice must also be posted plainly at the tribal office of any tribe affected by the agreement and in the county courthouse of any county affected by the agreement. The notice must describe the nature, scope, and purpose of the agreement and must state the times and places at which the agreement will be available to the public for inspection and copying.

Section 54-40.2-04 provides that as a condition precedent to an agreement made under Chapter 54-40.2 becoming effective, the agreement must have the approval of the Governor and the governing body of the tribes involved. If the agreement provides, it may be submitted to the Secretary of the Interior for approval.

Section 54-40.2-05 provides that within 10 days after a declaration of approval by the Governor and following approval of the agreement by the tribe or tribes affected by the agreement and prior to commencement of its performance, the agreement must be filed with the Secretary of the Interior, the clerk of court of each county in which the principal office of one of the parties is located, the Secretary of State, and the affected tribal government.

Section 54-40.2-05.1 provides that upon the request of a political subdivision or any tribe affected by an approved agreement, the Indian Affairs Commission is required to make findings concerning the utility and effectiveness of the agreement taking into account the original intent of the parties and the Indian Affairs Commission may make findings as to whether the parties are in substantial compliance with all provisions

of the agreement. In making its findings, the commission is required to provide an opportunity, after public notice, for the public to submit written comments concerning the execution of the agreement. The commission is required to prepare a written report of its findings made pursuant to Section 54-40.2-05.1 and to submit copies of the report to the affected political subdivision or public agency, the Governor, and the affected tribes. The findings of the commission made under Section 54-40.2-05.1 are for informational purposes only. In an administrative hearing or legal proceeding in which the performance of a party to the agreement is at issue, the findings may not be introduced as evidence, or relied upon, or cited as controlling by any party, court, or reviewing agency, nor may any presumption be drawn from the findings for the benefit of any party.

Section 54-40.2-06 provides that an agreement made pursuant to Chapter 54-40.2 must include provisions for revocation. Section 54-40.2-08 enumerates specific limitations on agreements between public agencies and Indian tribes. This section provides that Chapter 54-40.2 may not be construed to authorize an agreement that enlarges or diminishes the jurisdiction over civil or criminal matters that may be exercised by either North Dakota or tribal governments located in North Dakota; authorize a public agency or tribal government, either separately or pursuant to agreement, to expand or diminish the jurisdiction presently exercised by the government of the United States to make criminal laws for or enforce criminal laws in Indian country; authorize a public agency or tribal government to enter into an agreement except as authorized by its own organizational documents or enabling laws; or authorize an agreement that provides for the alienation, financial encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or subject to a restriction against alienation imposed by the United States. Finally, Section 54-40.2-09 provides that Chapter 54-40.2 does not affect the validity of any agreement entered between a tribe and a public agency before August 1, 1999.

Testimony and Committee Activities

The committee received testimony from a representative of the Game and Fish Department that the department has several concerns with the current status of hunting on the state's reservations. These include the dual-licensing system, the status of nontribal members hunting within reservations, and the different seasons between the reservations and the rest of the state. Department representatives testified that although the department has had discussions with tribal leaders on developing a single state-tribal cooperative agreement that would be uniform for the state and the tribes, developing a uniform agreement is very difficult because of the different federal laws and treaties governing each tribe, the different tribal game and fish codes, the different ways in which land is held within the external boundaries of the different reservations, and the different goals and objectives each tribe has for its game and fish programs.

The committee received testimony from representatives of the Standing Rock Sioux Tribe that the state should recognize tribal game and fish licenses and tags issued to both members and nonmembers and that the state should recognize tribal game and fish licenses just as it honors licenses issued by other states.

The chairman of the Three Affiliated Tribes testified that that tribe believes that the reservation of game and fish rights on the reservation not only guarantees tribal members the right to hunt and fish on tribal lands, but as an attribute of tribal sovereignty, allows the tribe to issue nonmembers licenses to hunt on tribal trust lands. The chairman testified that the Three Affiliated Tribes would like to avoid an adversarial relationship with the state on game and fish issues but would like to work cooperatively with the state as it has on Missouri River issues. The chairman of the Three Affiliated Tribes testified the tribe has prepared a draft memorandum of understanding between the Three Affiliated Tribes fish and game department and the North Dakota Game and Fish Department which recognizes tribal sovereignty as well as state game and fish laws and regulations and provides for a dual license for tribal lands with a state license at no cost and a tribal license at cost which would solve the problem of transportation of game taken on tribal trust lands off the reservation.

Committee Considerations

The committee considered a bill draft that provided that properly tagged game birds legally taken on Indian trust land could be possessed, transported, or shipped in state and that properly tagged big game legally taken on Indian trust land could be transported, shipped, or possessed within the state.

The chairman of the Three Affiliated Tribes testified that the bill draft will help rectify the tribe's problems with the Game and Fish Department as it would allow nonmembers who take game on Indian trust land to transport the game throughout the state. However, he suggested, "Indian trust lands" be replaced with "Indian reservation" so that lands owned by tribal members but not held in trust were covered by the bill draft. A representative of the Standing Rock Sioux Tribe testified that the words "and allotted lands" within any Indian reservation should be added to the bill draft.

A representative of the Game and Fish Department testified that the bill draft is confusing in that it does not clarify who is entitled to take game and fish on Indian trust land. The representative testified that if the bill draft is interpreted to mean anyone may take game and fish on Indian trust land and that nonmembers could take game and fish on Indian trust land without a state permit, it would be a shift in state policy. The representative testified that although tribes have the right to set game and fish seasons for tribal members on tribal lands, if the bill draft is interpreted to mean that nonmembers do not need a state-issued license to take game on Indian trust

land, it would make the management of the state's game and fish resources more difficult.

Recommendation

The committee recommends Senate Bill No. 2041 to provide that properly tagged game birds legally taken on Indian trust land may be possessed, transported, or shipped in state and that properly tagged big game legally taken on Indian trust land may be transported, shipped, or possessed within the state.

GARRISON DIVERSION UNIT PROJECT, DEVILS LAKE, AND NORTHWEST AREA WATER SUPPLY PROJECT

Representatives of the Garrison Diversion Conservancy District testified that in fiscal year 2003-04, the federal appropriation for the Garrison Diversion Unit Project was $47.3 million, which included funds for Indian and non-Indian municipal, rural, and industrial water supply projects, Indian irrigation projects, and wildlife mitigation. Representatives of the Garrison Diversion Conservancy District also noted this funding is supplemented by a one-mill levy on the counties within the conservancy district. As of June 30, 2004, federal municipal, rural, and industrial water supply funds expended during the fiscal year for rural water systems in North Dakota was over $3.5 million with total state and federal funding for construction of the All Seasons Rural Water Project, McKenzie County Rural Water Project, Ramsey County Rural Water Project, Williams County Rural Water Project, Tri-County Rural Water Project, and Northwest Area Water Supply Project at over $52 million. Also, in fiscal year 2003-04, the conservancy district budgeted $238,500 for research on high-value crop production, processing, and marketing.

Representatives of the Garrison Diversion Conservancy District testified that the conservancy district is the state lead and co-partner on the Red River Valley Water Supply Project Environmental Impact Statement. The conservancy district's role is to work with state, local, and end users to determine the best way to meet the water supply needs of the Red River Valley. The environmental impact statement is scheduled to be completed in December 2005. Representatives of the conservancy district testified that the Dakota Water Resources Act increased the federal authorization for recreation development and the Garrison Diversion Conservancy District has dedicated two-tenths of its one-mill levy to its recreation program. Representatives of the conservancy district reported that last fiscal year, the district provided over $253,000 in funding for 20 projects across the district.

The committee received updates concerning Devils Lake flooding from the State Engineer. Devils Lake has risen approximately 24 feet since 1993. The lake's flooded area has increased from 47,000 acres to 120,000 acres. Over $400 million has been spent on flood control at Devils Lake. Devils Lake's natural outlet is still 11 to 12 feet higher than the current water level and the lake would double in size before it reaches its natural overflow elevation.

The State Engineer testified that the state has taken a three-pronged approach to finding a solution to Devils Lake flooding. The first prong involves infrastructure changes in the Devils Lake Basin, such as raising roads, building dikes, and moving houses and towns. The second prong involves changes within the watershed, including restoring wetlands and increasing storage in the basin. The third prong is construction of an outlet to Devils Lake. The estimated cost of a federal outlet is $208 million, of which $135 million would be federal funds and $73 million state funds. In addition, the state would be responsible for all operation and maintenance costs, including operating a sand filter system at a cost of over $1 million per year, on a federal outlet. The committee received testimony from the State Engineer that although a state outlet raises concerns, state officials believe these concerns are more manageable than those relating to a federal outlet. The State Engineer testified that an outlet with a capacity of 100 cubic feet per second and an operating plan that provides for pumping only when downstream water quality standards can be met satisfies the provisions of the Boundary Waters Treaty of 1909 between the United States and Canada.

The committee received testimony that construction on the Northwest Area Water Supply Project began in April 2002. The two pipeline contracts for 2002 and 2003 totaled 19 miles of the 45 miles between Lake Sakakawea and the city of Minot with bidding for another 10 miles of pipeline to take place in 2004. This project is being constructed with 65 percent federal municipal, rural, and industrial water supply funds and 35 percent nonfederal funds, mostly provided by Minot city sales tax revenue.

NO CHILD LEFT BEHIND COMMITTEE

North Dakota Century Code (NDCC) Section 54-35-21, enacted in 2003, requires the Legislative Council to appoint an 11-member committee to study the No Child Left Behind Act of 2001, the direct and indirect impact of the Act on the school districts of this state, and the financial impact of the Act on the budget of this state and on the taxpayers of this state. The council also directed the No Child Left Behind Committee to receive information from the Superintendent of Public Instruction regarding the estimated costs that are likely to be incurred by this state during the ensuing eight years to meet the requirements of the No Child Left Behind Act of 2001.

Committee members were Representatives RaeAnn G. Kelsch (Chairman), Bob Hunskor, Lisa Meier, David Monson, Margaret Sitte, and Clark Williams and Senators Dwight Cook, Layton Freborg, Gary A. Lee, Ryan M. Taylor, and Rich Wardner.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2004. The Council accepted the report for submission to the 59th Legislative Assembly.

NO CHILD LEFT BEHIND ACT OF 2001 STUDY

Background

In 1965 President Lyndon B. Johnson signed into law the Elementary and Secondary Education Act. The purpose of that Act was to close the achievement gap that existed between advantaged and disadvantaged children. Before that time, there had been no allocation of federal funds to the individual states for the purposes of elementary and secondary education. That Act has been reauthorized by Congress every six to seven years.

The 1994 Congressional reauthorization of the Elementary and Secondary Education Act was called the Improving America's Schools Act. Congress found that after nearly 30 years of federal intervention in elementary and secondary education, the achievement gap still existed. Consequently, the 1994 Act sought to change the way education is delivered. The 1994 Act encouraged comprehensive systemic school reform, upgraded instructional and professional development to align with high standards, strengthened accountability, and promoted the coordination of resources to improve education for all children. The 1994 Act imposed requirements on states that received Title I funding. Those requirements included:

1. Submitting to the United States Secretary of Education an accountability plan of standards and assessments developed in consultation with local education agencies.
2. Developing challenging content standards and challenging student performance standards.
3. Developing a system of high-quality yearly student assessments, including assessments in reading and mathematics.
4. Disaggregating the assessment results by gender, racial and ethnic group, English proficiency status, migrant status, disability, and economic status.
5. Demonstrating adequate yearly progress based on the state's assessment system.

Congress determined that such stringent requirements together with high academic standards were needed to promote a national program of education reform. What the 1994 Act lacked, however, was a timeline within which the states were to act and consequences for those states that failed to act.

When President George W. Bush took office, only 11 states were in compliance with the 1994 Act and no state was denied funding for not complying with the law.

In 2001 the law was again reauthorized. This version was called the No Child Left Behind Act. As did the previous law, the No Child Left Behind Act requires each state to submit an accountability plan of standards and assessments. Unlike the previous law, the No Child Left Behind Act required all states to submit their accountability plans to the United States Secretary of Education by a date certain, which was June 2003. All 50 states, together with the District of Columbia and Puerto Rico, met that deadline.

As did the previous law, the No Child Left Behind Act requires each state to implement challenging content standards and performance standards.

As did the previous law, the No Child Left Behind Act requires each state to set up a system of high-quality assessments and to disaggregate those assessments by subgroups. Unlike the previous law, the No Child Left Behind Act provided funding for the development and implementation of the assessment systems.

As did the previous law, the No Child Left Behind Act requires each state to demonstrate adequate yearly progress. Unlike the previous law, the No Child Left Behind Act provides options for students attending schools that do not meet the goal of adequate yearly progress.

In crafting the No Child Left Behind Act, Congress recognized that there was diversity among the states and therefore gave states the flexibility to provide the substance for adequate yearly progress in their plans and to define advanced, proficient, and basic levels of achievement. States were given the flexibility to determine minimum group size for accountability, to define their major ethnic and racial groups, and to determine annual measurable objectives. States were also given the flexibility to integrate adequate yearly progress with previously existing accountability systems, to account for unique schools such as small rural schools, and to determine testing standards for new teachers and evaluation standards for experienced teachers.

The No Child Left Behind Act passed by an overwhelming bipartisan vote in Congress and was signed into law on January 8, 2002. Since passage of the Act, federal funding for education has grown by 36 percent. The President's 2005 fiscal year budget proposal

increases federal funding to $57.3 billion. North Dakota's Title I funding proposal is $33.1 million--an increase of $11.4 million over 2001 levels.

Standards and Assessments

The No Child Left Behind Act requires each state to adopt challenging academic content standards and challenging student achievement standards that are applicable to all schools and all students in the state. The standards may apply to whatever subjects a state selects but, at the very least, they must include mathematics and reading or English language arts. Beginning in the 2005-06 school year, the standards must also include science.

The academic content standards must:

- Specify what students are expected to know and be able to do.
- Contain coherent and rigorous content.
- Encourage the teaching of advanced skills.

The student academic achievement standards must:

- Be aligned with the state's academic content standards.
- Describe two levels of high achievement (proficient and advanced) that determine how well children are mastering the material in the academic content standards.
- Describe a third level of achievement (basic) to provide complete information about the progress of the lower-achieving students toward mastering the proficient and advanced levels of achievement.

In June 2002 the Superintendent of Public Instruction submitted the state's accountability plan to the United States Department of Education. The plan set forth as performance goals or statements of expectation that:

- All students will reach high standards and at a minimum attain proficiency in reading or English language arts and in mathematics by 2013-14.
- All limited English proficient students will become proficient in English and will reach high academic standards and at a minimum attain proficiency in reading or English language arts and in mathematics.
- All students will be taught by highly qualified teachers.
- All students will be taught in environments that are safe, drug free, and conducive to learning.
- All students will graduate from high school.

The Superintendent of Public Instruction also adopted performance indicators that are designed to ensure progress toward the attainment of the performance goals.

With respect to the actual standards, the state accountability plan provided that academic content standards applicable to grades 4, 8, and 12 had already been developed and adopted in the areas of English language arts and mathematics. The standards were developed by the Department of Public Instruction in accordance with the *North Dakota Standards and Assessment Development Protocols* and overseen by a state level advisory committee consisting of representatives from local school districts and Department of Public Instruction staff.

The English language arts standards were first drafted in 1996 and the mathematics standards were first drafted in 1999. The Superintendent of Public Instruction therefore opted to undertake a revision of both during 2004. With respect to science, the No Child Left Behind Act requires the development of content and achievement standards for implementation in the 2005-06 school year. The Superintendent of Public Instruction has contracted with McRel to serve as the project facilitator and has contracted with 35 teachers from across the state to serve on the drafting committee. An additional 30 teachers will serve as reviewers. The standards are expected to be complete in March 2005 and will thereafter be forwarded to CTB/McGraw-Hill for alignment of the assessments with the standards.

Accountability

The No Child Left Behind Act requires each state to develop and implement a single, statewide accountability system, which will be effective in ensuring that all local school districts and all public elementary and high schools make adequate yearly progress. Each state accountability system must:

- Be based on the state's academic standards and academic assessments and must take into account the achievement of all public elementary school and high school students.
- Include sanctions and rewards, such as bonuses and recognition, by which a state can hold its school districts and public elementary and high schools accountable for student achievement and for ensuring that adequate yearly progress is made.

The state accountability plan provided that assessments, like content standards, had already been developed and adopted in English language arts and in mathematics at grades 4, 8, and 12, in accordance with the *North Dakota Standards and Assessment Development Protocols*. State assessments in science will be available for use in the 2007-08 school year.

From 2001-04, CTB/McGraw-Hill was the primary contractor for the development and administration of the state assessments. During that time, the assessment system was subjected to three technical quality peer review sessions. These sessions were facilitated by the United States Department of Education and performed by committees of independent assessment specialists. The reviews were designed to assess how well a state did in meeting the technical requirements of the No Child Left Behind Act and to analyze a variety of criteria, including alignment to standards, the inclusion of all students, validity and reliability, the reporting of results, public accessibility, support services, and accountability measures.

On October 15, 2003, the Superintendent of Public Instruction released a request for proposals regarding the provision of the North Dakota state assessments for

the next three to five years. In December 2003 the Superintendent convened two separate committees to review all the proposals and to recommend a preferred bidder. In January 2004 the Superintendent announced that CTB/McGraw-Hill had again been awarded the contract.

Adequate Yearly Progress

The No Child Left Behind Act requires each state to demonstrate what constitutes adequate yearly progress toward meeting the academic achievement standards with respect to the state, each of its school districts, and all of its public elementary and high schools. Although each state is permitted to define what constitutes adequate yearly progress, the definitions must:

- Apply the same high standards of academic achievement to all public elementary and high school students in the state.
- Be statistically valid and reliable.
- Result in continuous and substantial academic improvement for all students.
- Measure the progress of public elementary schools, high schools, school districts, and the state on the basis of academic assessments.
- Include separate measurable annual objectives for continuous and substantial improvement in the achievement of:
  - All public elementary school and high school students; and
  - Economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency.
- Include graduation rates for public high school students.
- Include at least one other academic indicator, as determined by the state for all public elementary school students.

The definitions may also include other academic indicators, as determined by the state for all public school students and measured separately for each subgroup, such as achievement on additional state or locally administered assessments; decreases in grade-to-grade retention rates; attendance rates; and changes in the percentage of students completing gifted and talented, advanced placement, and college preparatory courses.

In North Dakota a school is identified as having met adequate yearly progress if, considering statistical reliability, its student scores on the state assessment meet or exceed the state's annual performance goals for the composite and for each subgroup and if its rate of student participation on the state assessment meets or exceeds 95 percent for the composite and for each subgroup. If the school is an elementary school, its student attendance rate must meet or exceed 93 percent and if the school is a high school, its graduation rate must meet or exceed 89.9 percent. The stated percentages for student attendance and graduation are the state rates.

Before a school is identified as not meeting adequate yearly progress, the state plan requires that the Superintendent of Public Instruction must be able to make that determination with an assurance rate that exceeds 99 percent. If on the initial review the Superintendent is not able to determine that a school did not meet adequate yearly progress with that level of assurance, the Superintendent must roll up two years worth of data. If the Superintendent is still not able to determine that a school did not meet adequate yearly progress with the 99 percent level of assurance, the Superintendent must then roll up three years worth of data. If the 99 percent rate is not reached at that point, Safe Harbor is employed. Under this method, if a school is able to demonstrate that the number of subproficient students was reduced by 10 percent, the school will be found to have met adequate yearly progress. The fifth and final level of review allows for the implementation of a special rule applicable to Title I schools. The special rule allows the Superintendent to consider only the Title I students and if those students met or exceeded the expected level of improvement, the school is determined to have met adequate yearly progress.

For the 2003-04 school year, the Superintendent of Public Instruction determined the adequate yearly progress status of 486 schools--406 schools met adequate yearly progress, 45 schools did not meet adequate yearly progress, and 35 schools had data insufficient for the Superintendent to make a determination.

If a Title I school is identified for two consecutive years as not meeting adequate yearly progress, the school is placed on program improvement. Based on the 2003-04 assessments, no additional schools were placed on program improvement and three that had been in program improvement were removed from the list because they met adequate yearly progress for two consecutive years. The following schools are currently on program improvement:

- Dunseith Elementary School.
- Dunseith High School.
- Edwin Loe Elementary - New Town.
- Four Winds Community High School.
- Fort Yates Elementary School.
- Fort Yates High School.
- Mandaree High School.
- Oberon Elementary School.
- Pettibone Elementary School.
- Selfridge Elementary School.
- Selfridge High School.
- Solen High School.
- St. John High School.
- Turtle Mountain Elementary School - Belcourt.
- Turtle Mountain Middle School - Belcourt.
- Turtle Mountain High School - Belcourt.
- Twin Buttes Elementary School.
- Warwick High School.
- White Shield Elementary School.
- White Shield High School.

If a school is placed on program improvement, the school must develop a two-year improvement plan, incorporate strategies from scientifically based research, strengthen the core academic subjects, and address the specific issues that caused the school to be identified. Ten percent of the school's Title I funds must be set aside for professional development activities that directly address the causes of the identification and the school district must provide students attending the school with the option of attending another public school that is not identified as being in program improvement. Transportation to the other school must be provided by the student's regular school district for so long as the regular school is in program improvement.

If a school has not met adequate yearly progress for three consecutive years, the school choice option is continued and, in addition, the disadvantaged students within the school must be allowed to obtain supplemental educational services from a public or a private sector provider selected by their parents. If a school has not met adequate yearly progress for four consecutive years, the school district must also consider corrective actions, such as replacing staff or implementing a new curriculum. After five years the district must make arrangements for alternate governance, state takeover, private management contracts, conversion to a charter school, or significant staff restructuring.

Highly Qualified Teachers

Under the No Child Left Behind Act, "highly qualified" means that an individual has passed the state teacher licensing examination; holds a license to teach; and has not had licensure requirements waived on an emergency, temporary, or provisional basis. To be deemed highly qualified under the Act, an elementary teacher who is new to the profession must hold at least a bachelor's degree and have demonstrated, by passing a rigorous state test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum.

To be deemed highly qualified under the Act, a middle school or high school teacher who is new to the profession must hold at least a bachelor's degree and have demonstrated a high level of competency in each of the academic subjects in which the individual teaches. This may have been done by passing a rigorous state academic subject test in each of the academic subjects in which the individual teaches or by successfully completing, in each of the academic subjects in which the individual teaches, an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing.

To be deemed highly qualified under the Act, an elementary, a middle school, or a high school teacher who is not new to the profession must hold at least a bachelor's degree and either have met the requirements applicable to new teachers at the appropriate level of instruction or have demonstrated competence in all the academic subjects in which the individual teaches based on a high objective uniform state standard of evaluation that:

- Is set by the state for both grade appropriate academic subject matter knowledge and teaching skills.
- Is aligned with challenging state academic content and student academic achievement standards and developed in consultation with core content specialists, teachers, principals, and school administrators.
- Provides objective, coherent information about the teacher's attainment of core content knowledge in the academic subjects in which an individual teaches.
- Is applied uniformly to all teachers in the same academic subject and at the same grade level throughout the state.
- Takes into consideration, but is not based primarily on, the time the individual has been teaching in the academic subject.
- Is made available to the public upon request.
- May involve multiple, objective measures of teacher competency.

To provide individuals who are new to teaching and those who are not new to teaching with the greatest possible amount of time to understand and meet the new expectations, the Education Standards and Practices Board in May 2003 hosted a Community Building Day in Bismarck. Approximately 600 administrators, principals, and other individuals attended. During July 2003 the board held eight regional meetings for teachers, administrators, representatives from institutions of higher education, and other individuals to again highlight the new expectations. In November 2003 the board published a *Toolkit*--a booklet of definitions, directions, procedures, guidelines, and forms designed to help individuals become highly qualified teachers in North Dakota.

There are multiple ways in which an individual can become a highly qualified teacher in North Dakota. If the individual has a major, such as a composite science degree, or a minor, the individual can take additional coursework. The individual can also take the Praxis II test, complete a portfolio, obtain an advanced degree in a content area, or obtain the National Board for Professional Teaching Standards certification. The *Toolkit* allows individuals to review their transcripts and experiences and determine which method best suits their needs.

In January 2004 the North Dakota University System conducted free transcript reviews for those individuals who did not meet the definition of highly qualified and who would be returning to an institution for additional coursework. For those who selected to use the portfolio option to become highly qualified, the board provided regional trainers to assist teachers with the construction of their portfolios and provided a panel of assessors to evaluate the portfolios. The portfolio option is not based on a pass/fail. Either the portfolio allows for a declaration of highly qualified or the individual is asked to provide additional information or documentation.

State Accountability Plan - Study

When the state accountability plan was submitted to the United States Department of Education, one of the conditions to its approval was that the state must conduct an extensive study of the plan's various provisions, including those relating to validity and reliability. The Superintendent of Public Instruction therefore proposed the creation of a 25-member statewide accountability committee. The committee would include five members from the Title I Practitioners' Committee, five members from the Individuals With Disabilities Education Act Advisory Committee, five members from the Standards and Assessments Learning and Teaching team, a representative of the North Dakota Education Association, a representative of the North Dakota School Boards Association, a representative of the North Dakota Council of Educational Leaders, a representative of the Indian Affairs Commission, a representative of the Governor, staff members from the Department of Public Instruction, and one legislator appointed by the Legislative Council. The Superintendent has contracted with national accountability and assessment consultants to serve as advisors to the committee.

Over the years the Superintendent of Public Instruction and the Department of Public Instruction staff have involved hundreds of educators in the development of content and achievement standards, assessments, alignment of assessments to standards, the design of assessment reports, the alignment of cut points to achievement standards, and the development of protocols and policies. Educators were also involved with the Elementary and Secondary Education Act and the Individuals With Disabilities Education Act programming and policy committees, the development of accreditation standards, peer reviews of discretionary grants, statewide technology committees, and data collection and analysis projects, among others. The Superintendent believes it is wise not only to continue this broad level of educator involvement in the study process but also to rely on the expertise, the insight, and the contributions of the state's education community in reviewing the accountability plan and making changes that will ensure a sound and sustainable system over the long term.

Opposition to the No Child Left Behind Act and to Its Implementation

Over the course of the interim, the committee heard many positive things that were happening in the teaching profession, in the classrooms, and at the managerial level because of the requirements of the No Child Left Behind Act. However, the committee also heard about the changes that the Act necessitated or will necessitate regarding the manner in which education is delivered and the burden that such changes placed or will place on teachers, schools, and school districts in the state.

Teachers

Opponents testified that the requirement for highly qualified teachers would cause many teachers to retire rather than become highly qualified and that districts would lose those teachers who are not highly qualified. A concern was also raised that districts with highly qualified teachers would be at risk of losing them to other districts that could and would pay more. The issue most fervently raised by the opponents was that teachers should be permitted to teach in the areas in which they hold minors.

Testing

Opponents testified that the progress of students could be better measured through the use of cohort testing rather than programmatic testing and that a more equitable measurement of the progress made by special education students would result from testing such students at their instructional level not at the grade level in which they are placed. It also was argued that the 1 percent student cap on the use of alternate assessments was woefully inadequate and should be increased.

Adequate Yearly Progress

Opponents testified that the large scale firing of staff and the takeover of schools that have not met adequate yearly progress for five consecutive years is inappropriate and should not be permitted.

Truancy

Opponents testified that in some schools student attendance is an issue and they raised a specific concern about tribal courts that provide students with the option of attending school or going to jail. It was contended that such students are not committed to the learning process. It was also contended that the No Child Left Behind Act takes no steps toward requiring that parents actually send their children to school. The premise raised was that student failure cannot be blamed solely on teachers and that parents and students play a major role in the education process.

Superintendent of Public Instruction and the Department of Public Instruction

Opponents testified that the Department of Public Instruction has become a regulatory agency for the No Child Left Behind Act in this state and that this is not the role that the department should have. It was even suggested that the department should be under the direction of an elected or an appointed board of education, which would in turn select the chief school officer. It was charged that there has been a lack of communication between the Department of Public Instruction staff and the education interest groups in the state and as a result documents were submitted to the United States Department of Education without any comprehensive and continuing involvement from the education interest groups. These assertions were most strongly directed toward the selection of assessments and the establishment of cut scores.

Finances

Opponents testified that the requirements of the No Child Left Behind Act validate the need for full-day kindergartens and for an extended school year within which summer school, tutoring, special services, and professional development activities can occur. Opponents testified that additional resources were needed so curricula could be aligned, standards could be implemented, and that highly qualified teachers could be paid more. Opponents also suggested that there be shared vision, incentives, and funding flexibility.

Coalition of Education Interest Groups

Representatives of the North Dakota Council of Educational Leaders, North Dakota Education Association, and North Dakota School Boards Association joined forces to provide the committee with a list of concerns they believed needed to be addressed. The members of this coalition stressed that they supported holding schools accountable and understood the importance of the No Child Left Behind Act in the education process. The coalition also indicated that its members saw major problems with the No Child Left Behind Act. The coalition therefore presented a variety of recommendations that it concluded will result in every child ultimately moving to a higher level of achievement.

The first recommendation was that an advisory commission be established to provide input to the Superintendent of Public Instruction and to appropriate legislative committees. This advisory commission would also monitor progress and facilitate changes to the state's accountability plan. The proposed membership of this advisory commission would include two representatives of the North Dakota Council of Educational Leaders, two representatives of the North Dakota Education Association, two representatives of the North Dakota School Boards Association, two staff members from the Department of Public Instruction, one representative of the Governor, and six legislators.

The second recommendation was that individual education programs be used for the assessment of progress by special education students who have significant impairments and that the 1 percent cap for alternative assessments be raised to 5 percent.

The third recommendation was that the binomial distribution formula not be used in determining adequate yearly progress and that schools not be identified if they have fewer than 30 students in regular education or 45 students in special education.

The fourth recommendation was that special education students and English language learners be eliminated as subgroups for the determination of adequate yearly progress. The theory advanced was that the inherent language and cognitive barriers of such students create unique assessment challenges.

The fifth recommendation was that students' academic growth be measured by cohorts to determine adequate yearly progress instead of using a status or programmatic measurement that compares groups of students as they pass through a grade level. It was stated that programmatic measurement is adequate for curricular issues but that students, the school districts, and their communities would be best served by seeing how much students grew academically from year to year.

The sixth recommendation was that school districts should be allowed to use their supplemental service funds to make supplemental services available within their district or consortium. It was stated that a school district could make licensed teachers available and function as the supplemental service provider rather than purchasing services from outside providers.

The seventh recommendation was that high school graduation rates should be extended to six years rather than the standard four years. It was stated that this would prevent a school's graduation rates from being impacted simply because a student elects to take one or two additional years to obtain a high school diploma.

The eighth recommendation was that teachers licensed as of July 1, 2003, should be considered highly qualified and they should be permitted to continue teaching in the areas of their minors. The recommendation also included a redefinition of core areas so that the highly qualified requirement would apply only to those subjects that must be assessed under the No Child Left Behind Act. It was stated that North Dakota teachers have proven their ability to deliver a quality education and that rural schools do not have the luxury of hiring a teacher for every core area.

The final recommendation was that the No Child Left Behind Act be fully funded. It was stated that even though the true costs of the No Child Left Behind Act are not known, it is known that the existing resources are inadequate.

Department of Public Instruction Response to Coalition Recommendations

Department of Public Instruction staff indicated that their efforts to date have focused on meeting the requirements of the No Child Left Behind Act and its accompanying regulations and through use of its 25-member advisory committee, creating a good, sound, and sustainable education system. It was pointed out that the advisory committee established by the Superintendent of Public Instruction builds on the expertise of the education community and on the insight and contributions of North Dakota educators who have participated in the standards establishment and school improvement process for many years. The advisory committee includes researchers, developers, technicians, and individuals who focus on reporting results. The advisory committee also includes representatives from McRel, the National Center for Improvements in Education Assessments, and the National Center for Education Outcomes. The advisory committee will be charged with examining the clarity and quality of the state's content standards, the clarity and accuracy of the state's achievement standards, and the quality, reliability, and validity of the state's assessments, including both regular and alternate assessments. The advisory committee also will be charged with studying every element of the No Child Left

Behind Act and the accompanying regulations, studying best practices, and most importantly, reviewing data. The Superintendent firmly believes that any change to the state plan must be based upon a complete and thorough understanding of the proposed change and its impact on all other areas and that this is the formula for ensuring the best policy decisions for the future.

Department of Public Instruction staff drew a significant distinction between the role and function of the Superintendent's advisory committee, as set forth in the state accountability plan, and the proposed role and function of the advisory commission suggested by the coalition. Despite the nomenclature, the commission suggested by the coalition was thought not to be focused on advising the Superintendent of Public Instruction and the Department of Public Instruction but rather on wanting governance and control.

With respect to how special education students are assessed and specifically with respect to the suggestion that the 1 percent cap for alternative assessments be raised to 5 percent, the Department of Public Instruction staff indicated that the state has not yet gone beyond 1 percent in terms of the number of students actually administered alternate assessments. Although other states have requested an increase, the United States Department of Education has been reluctant to raise that percentage. It was suggested that this issue should be given further study by an advisory committee and particularly from a policy perspective. An increase in the alternate assessment cap to 5 percent would indicate a belief that half of all special education students are considered incapable of being tested.

Department of Public Instruction staff suggested that the recommendation regarding the use of an end value as opposed to a binomial distribution formula should be studied by an advisory committee and that a determination should be made regarding the level of protection given to our schools. Preliminary indications are that employing an end value of 30 would have resulted in a higher rate of identification than did use of the binomial distribution formula.

The coalition's proposal to eliminate special education and English language learners as subgroups for the determination of adequate yearly progress was viewed by the Department of Public Instruction staff as being beyond the scope of what could be addressed at the state level. Department staff pointed out that the subgroups are clearly established by the No Child Left Behind Act and their removal would require Congressional action. Department staff referred to any discussion regarding the proposed removal of subgroups as both important and value-laden. It was suggested that one of the premises behind the No Child Left Behind Act was that a state should look at improving its service to all of its students rather than effectively removing certain students from the discussions.

Department of Public Instruction staff acknowledged that the recommendation regarding the use of cohort testing arises frequently and progress can be measured based on a student, class, school, or larger group. In fact, Department of Public Instruction staff suggested that all levels of measurement would be ideal. However, it was also stated that there must be clarity regarding what is being measured. An assessment of programmatic growth will yield different information than will an assessment of cohort growth. Often teachers complain they are being held accountable for outcomes that are beyond their control. However, in the measurement of cohorts, teachers cannot control the ability level of students, the number of students in a classroom, the students' family background, the level of parental support, or the native languages of the students. On the other hand, what happens within a classroom--the educational program--is largely under the control and influence of a teacher. The educational experiences in which students engage, the teaching techniques used, the timing and pace of the curriculum, and how learning is practiced were said to be largely within the control of a teacher. Programmatic growth focuses on the impact of such variables.

Even though programmatic growth is the model required by the No Child Left Behind Act, it is not an invention of the Act. For over 15 years, it has been used to demonstrate how well a school is doing, how well a school's curriculum is performing, and how well a school's textbook series is doing in getting students to learn. The No Child Left Behind Act is based upon the premise that each school, rather than each student, needs to make adequate yearly progress. Initially assessments were given at grades 4, 8, and 12. Provisions are now being made to offer additional assessments in grades 3 through 8. That move will allow individuals to look at cohort progress as well as programmatic progress.

With respect to the coalition recommendation that supplemental service funding should be made available to school districts so that such services might be developed and provided within a district, Department of Public Instruction staff testified that school districts, joint powers organizations, and even individual teachers are eligible to become supplemental service providers. The only limitation is that a school district that is in program improvement may not become a supplemental service provider. Supplemental service providers do not have to be licensed teachers and are not required to meet the highly qualified standard. However, they must complete an application. To date, only seven individuals have sought to become supplemental service providers. No school or school district has applied.

Department of Public Instruction staff also addressed the coalition recommendation that high school graduation rates be extended to six years rather than the standard four years. It was said that this extension is not permitted under federal regulations. However, the department has initiated negotiations with the United States Department of Education regarding this topic.

Because teacher licensure in this state falls under the purview of the Education Standards and Practices Board, the Department of Public Instruction staff did not address the coalition's recommendation that teachers be

permitted to continue teaching students in the areas of their minors, except to reference the definition of highly qualified in the No Child Left Behind Act and to point out that the definition requires the passing of a rigorous state academic subject test in each of the academic subjects in which the individual teaches or successful completion, in each of the academic subjects in which the individual teaches, of an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing.

The final coalition recommendation that the No Child Left Behind Act be fully funded was recognized as a concern but often more from the perspective of how available funds are distributed or accessed. The funding for the No Child Left Behind Act is based on school district census data. Because of this state's small population, the Superintendent of Public Instruction has petitioned the United States Department of Education for a waiver that would allow the use of free and reduced lunch counts to be used in addition to the school district census as the basis for determining funding levels.

Committee Considerations

Committee members expressed frustration over the contention that the development and implementation of the state accountability plan occurred without input from school districts, teachers, parents, and the Legislative Assembly. The committee also took into account the concern raised by the education interest groups that the groups' suggestions to the Superintendent of Public Instruction and to the Department of Public Instruction staff tend to be met with phraseology such as "it is not permitted" or "the feds will not allow it." However, the committee also understood that certain objections to the No Child Left Behind Act were based on the content of the federal legislation and that the role of the North Dakota Legislative Assembly in those instances would be limited to ensuring the greatest degree of flexibility until such time as the issues are reconsidered at the federal level.

Committee discussion reflected an understanding that suggestions for changes in the state plan have to be based on more than anecdotal evidence. The changes need to demonstrate a sound public policy basis, both from an educational and from a fiscal perspective, and the changes need to be subjected to a thorough and detailed study so that their implications are fully and completely understood.

The committee considered a bill draft patterned on the coalition's recommendation for an advisory commission. The commission would consist of 17 members--two appointed by the North Dakota Council of Educational Leaders, two appointed by the North Dakota Education Association, two appointed by the North Dakota School Boards Association, two appointed by the Superintendent of Public Instruction, one appointed by the North Dakota Indian Affairs Commission, one appointed by the Education Standards and Practices Board, and one appointed by the Governor. The committee also would include six legislators appointed by the Legislative Council.

The bill draft detailed a series of topics that the advisory commission would have to consider. The topics included the nature and scope of assessments permissible under the No Child Left Behind Act in determining the adequate yearly progress of special education students and English language learners and in determining the adequate yearly progress of students in other subgroups, if applicable. Cost, staff training, and communication to the field of known assessment alternatives, the use of instructional level assessments, and the use of exemptions from assessment also would be addressed.

The commission would have to explore the feasibility and desirability of using cohort testing rather than programmatic testing to determine adequate yearly progress and to examine the manner in which student achievement proficiency ratings are established. This would include an examination of the process by which individuals involved in determining the ratings are selected and an examination of alternate means for establishing student achievement proficiency ratings. The public policy with respect to the objectivity of the ratings would be addressed as well.

The efficacy of the binomial distribution formula would be studied and particular focus would be given to its ability to provide a full and complete accounting of the adequate yearly progress of schools and school districts and its ability to segregate, separate, or shelter schools having small or identifiable populations of students. The commission also would be asked to examine from a policy perspective the impacts of increasing and the impacts of decreasing the identification of schools not meeting adequate yearly progress.

Other issues for the commission's study would include student transfers, teacher availability throughout the state, and the creation of a valid and reliable cost reporting system that would allow for accurate longitudinal comparisons and for comparisons by and among schools and school districts. The Legislative Council would provide staff services to the commission and commission members who are also members of the Legislative Assembly would be entitled to receive per diem compensation and reimbursement for travel and other expenses incurred in the performance of official duties.

The advisory commission would be treated as an interim committee, except that it would be directed to report its findings and recommendations, together with any appropriate legislation to a joint meeting of the Senate and House Education Committees in January of each odd-numbered year.

Originally, the bill draft called for the expiration of the commission at the conclusion of its report in January 2007, but the committee removed the expiration date. The committee determined that if the need for this commission waned in the future, the statutes could be repealed at that time.

The bill draft, as first presented to the committee, also included the removal of dated statutory language governing the activity of the current interim No Child Left Behind Committee. The committee concluded the interim committee should likewise be carried forward through the 2005-06 interim.

The committee had two principal concerns about the bill draft. The first concern was that at 17 members, the group would be unwieldy. Consequently, the committee amended the bill draft to trim the commission to 13 by eliminating one representative from each of the three interest groups and from the Department of Public Instruction. An argument was made that even at 13 members, the commission's size would still negatively impact its effectiveness.

The second concern had to do with the purpose of the commission and what it would achieve. Even though it would be assembled for the purpose of providing a voice that some believed did not and does not exist, it was pointed out that the commission would still not be representative of all those who should be heard. The North Dakota Council of Educational Leaders does not include every principal and superintendent in the state and the North Dakota Education Association does not include every teacher in the state. The commission would have no individuals representing taxpayers and no individuals representing parents. Most members of the commission would not be elected and therefore would have no accountability to and no responsibility for taxpayer concerns. The commission was termed a consensus group that would bring clout into the legislative session, limit debate on the issues, and ultimately limit the constitutional process.

Because some of the concerns and suggestions raised by the coalition could be addressed only at the federal level, the committee considered a resolution draft that would have urged Congress to amend the No Child Left Behind Act for the purpose of standardizing the subgroups on a regional or a national basis, providing greater flexibility in the determination of high school graduation rates and recognizing general educational development diplomas and alternative high school programs in those rates, and permitting special education teachers to be considered highly qualified when they teach core subjects to students with disabilities in collaboration with a highly qualified classroom teacher. The resolution draft also would have urged Congress to recognize that the current levels of Title I funding are insufficient to bring low-performing students to the levels of proficiency envisioned by the No Child Left Behind Act of 2001 and therefore the Act should be adequately funded. The committee made an effort to amend the body of the resolution draft but after some consideration determined that a concurrent resolution urging Congressional action was realistically not apt to effect any desired changes.

The committee also considered a bill draft relating to truancy. The bill draft came as a response to the No Child Left Behind Act, which holds schools and teachers accountable for the education of students but does not place a responsibility on the parents or the students themselves. The bill draft provided that if a student is not in attendance and if that student had not been excused, the teacher would be required to notify the administrator of the school. The administrator would in turn initiate an investigation into the cause of the absence and if the administrator had reason to believe the person having responsibility for the child had failed to ensure the child's attendance, the administrator would be required to refer the matter to the state's attorney. Any person who failed to ensure a child's attendance would be guilty of an infraction for a first offense and would be guilty of a Class B misdemeanor for a second or subsequent offense.

Parents would be subject to a maximum fine of $500 for a first offense and for a second offense parents would be subject to either a maximum fine of $1000, a maximum incarceration of 30 days, or both. Student responsibility for attendance would be achieved through a provision that permits the director of the Department of Transportation to cancel the driver's license of any student under age 16 upon notification by the administrator of the student's school that the student was in violation of the compulsory attendance laws of this state or of the attendance policies of the school or school district.

Although the committee did not examine student attendance rates and the prevalent degree of truancy, it concluded that student attendance was a necessary component of learning and needed to be encouraged.

Recommendations

The committee recommends House Bill No. 1038 to create an advisory commission on the No Child Left Behind Act. The commission would operate under the Legislative Council rules of procedure for interim committees, complete with meeting notices, agendas, and opportunities for public testimony. The committee recommends Senate Bill No. 2042 to penalize parents who fail to ensure their children's attendance and to cancel the driver's license of a truant student under age 16.

ESTIMATED COSTS OF THE NO CHILD LEFT BEHIND ACT - REPORT BY SUPERINTENDENT OF PUBLIC INSTRUCTION

After receiving information from several other states regarding the estimated costs of the No Child Left Behind Act, the committee recognized that before accurate information could be gathered and presented, a framework would have to be constructed and agreement would have to be reached as to what constitutes the direct and indirect costs of the Act. The Superintendent of Public Instruction pointed out the monumental nature

of this project and further pointed out that a valid and reliable result would require the effort of every school district in the state. Creating such a framework and reporting system was therefore included by the committee as one of the duties to be undertaken by the proposed advisory commission on the No Child Left Behind Act.

PUBLIC SERVICES COMMITTEE

The Public Services Committee was assigned three studies. Section 1 of House Bill No. 1386 directed a study of laws requiring a surety bond, the state bonding fund, availability of private surety bonds, and the appropriateness and necessity of bonds. Section 4 of Senate Bill No. 2008 directed a study of the feasibility and desirability of transferring inspection and standards functions conducted by various state agencies to the Public Service Commission. The Legislative Council limited the study, however, to agriculturally related functions. Senate Concurrent Resolution No. 4016 directed the study of the provisions of North Dakota Century Code Title 4 which relate to the powers and duties of the Seed Commissioner and the State Seed Department.

Committee members were Senators Aaron Krauter (Chairman) and Jerry Klein and Representatives Randy Boehning, Rod Froelich, Chet Pollert, Arlo E. Schmidt, Mike Timm, and John Warner.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2004. The Council accepted the report for submission to the 59th Legislative Assembly.

BONDING OF PUBLIC EMPLOYEES AND PRIVATE SECTOR LICENSEES STUDY

Section 1 of House Bill No. 1386 directed a study of:

1. North Dakota Century Code (NDCC) provisions requiring public officers and other individuals and entities to provide bonds.
2. Whether the state bonding fund is an appropriate entity to provide those bonds.
3. Whether private entities within the state provide bonds for public officials and other individuals and entities required to be bonded.
4. Whether the bonds required by statute are appropriate and necessary.

As introduced, the bill expanded the public employees who are bonded under the state bonding fund to include any employee or official required by statute to provide a bond. This change would have included a person employed by an occupational and professional board or commission. The bill also would have required a public employee who elected to purchase a bond from a surety company, instead of being bonded by the state bonding fund, to purchase the bond from a company located within this state. The legislative history reveals that the bill was introduced to address the problem of auctioneers and auctioneer clerks being able to secure a bond solely from out of state. The solution was to have a state bonding fund provide the bond, thereby keeping the fee for the bond in this state.

Bonding of Public Employees

Statutory Framework

Generally, there are two separate groups of people which are required by law to be bonded--public employees and licensees. Although a public employee may be bonded through a surety company under NDCC Section 26.1-21-23 and personally pay for the bond, most public employees are bonded through the state bonding fund. In addition, under Section 26.1-21-19, the Insurance Commissioner may cancel the liability of the fund for an act of an employee or official. If that happens, the official or employee may secure, at personal expense, a bond executed by a surety company.

Research does not reveal any requirement in NDCC Chapter 26.1-21, the state bonding fund law, for public employees and officials to be bonded through the state bonding fund. Requirements for bonds come from other statutes requiring bonds in limited circumstances.

Upon application and approval by the Insurance Commissioner, the state bonding fund provides a fidelity bond to public employees and public officials. Under NDCC Section 26.1-21-01, a public employee is any person employed by the state or any of its political subdivisions, officers and employees of a nonprofit organization providing services and programs for senior citizens, the treasurer and district employees of a water resource district, and an officer or employee of the International Peace Garden. "Public employee" does not include a person employed by an occupational or professional board or commission or the State Bar Association of North Dakota. "Public official" is any officer or deputy required to be bonded by law except for an officer of an occupational or professional board or commission or the State Bar Association. "State" means the state departments, agencies, industries, and institutions and the International Peace Garden. "Political subdivision" means a county, township, park district, school district, city, and any other unit of local government which is created either by statute or by the Constitution of North Dakota for local government or other public purposes.

Under NDCC Section 26.1-21-06, the bond provided by the state bonding fund is limited to that of a fidelity bond, unless otherwise provided by statute. A fidelity bond is a bond covering an employer for loss due to embezzlement, larceny, or gross negligence by employees. Under Section 26.1-21-07, the Insurance Commissioner determines coverage under the fund based upon money or property handled and the opportunity for defalcation. However, the commissioner may not set the coverage in an amount less than is otherwise required by law. *Black's Law Dictionary*, 6th Edition, defines defalcation as the act of embezzling, the failure to meet an obligation, the misappropriation of money held in any fiduciary capacity, and the failure to properly account for these funds.

Under NDCC Section 26.1-21-02, the Insurance Commissioner manages the state bonding fund. Under Section 26.1-21-04, the Attorney General is the attorney for the commissioner in matters relating to the fund. Under Section 26.1-21-05, the State Investment Board invests the fund.

Under NDCC Section 26.1-21-09, the Insurance Commissioner determines the premium for the bond. Premiums are waived unless the bonding fund falls below a certain level. Once the bonding fund falls below a certain level, premiums must be resumed until the bonding fund reaches a certain cap.

The bonding fund began operation in 1915. In 1915 the fund had the following cap: once the bonding fund reached the amount of $100,000, any excess was distributed to the various political subdivisions for which entities within the subdivision were required to be bonded in an amount in proportion to the amount of premium paid by the political subdivision. In 1947 the law provided that premiums are triggered when the bonding fund is depleted below the sum of $1 million. The cap for the termination of collection of premiums was set at $1.2 million. In 1953 the law provided that the trigger for the collection of premiums was $2.5 million. The cap for the termination of collection of premiums was $3 million. A premium has not been charged for coverage since 1953. In 2003, Senate Bill No. 2015 amended Section 26.1-21-09 to lower the trigger for the collection of premiums from $2.5 million to $2 million. The threshold for the termination of collection of premiums remains at $3 million.

The return on investment of the fund has outpaced claims. So much so that in the bienniums since 1993, the Legislative Assembly has twice transferred money from the bonding fund to the general fund. During the 1993-95 biennium, House Bill No. 1005 transferred $2.5 million from the bonding fund to the state general fund. During the 2003-05 biennium, Senate Bill No. 2015 transferred $2.8 million from the bonding fund to the state general fund.

Under NDCC Section 26.1-21-11, claims on a bond must be presented to the Insurance Commissioner within 60 days after discovery of a default or wrongful act. Under Section 26.1-21-13, the Insurance Commissioner audits all liability claims against the fund. The Attorney General must approve an audit. Under Section 26.1-21-14, an action may not be maintained against the fund on a claim unless the claim first has been presented for allowance and the allowance of the claim has been refused.

Legislative History

In 2003, Senate Bill No. 2185 repealed NDCC Sections 44-01-08, 44-01-09, and 44-01-10. These sections applied when a public officer gave a bond other than one by the state bonding fund. Under Section 44-01-08, the bond must have been approved by the Governor as to its sufficiency and the Attorney General as to its form if the bond were given by a state officer and approved as to its sufficiency by the board of county commissioners or other governing body and to form by the state's attorney if the bond were given to an officer of a county or other political subdivision. Under Section 44-01-09, the bond of a state or district officer must have been filed with the Secretary of State, and the bond of any officer must have been filed with the county recorder.

According to the Secretary of State, these sections were repealed because they were obsolete because the Secretary of State's office never filed these bonds. In addition, a survey conducted by the Secretary of State's office of this state's 53 county recorders found that of the 21 recorders who responded, only one found evidence of a bond filing and that filing occurred in the 1930s. Although the Secretary of State no longer has the duty to file bonds under NDCC Section 44-01-09, under Section 54-09-02 the Secretary of State is required to record and maintain records of the official bond of any state official who furnishes in lieu of the bond furnished by the state bonding fund a bond by a duly authorized surety company.

In 1999, Senate Bill No. 2360 removed a number of requirements on state officials and employees of furnishing a bond in a particular amount. The legislative history reveals that the reason for the removal was that the bonds required by these statutes were separate from the bond provided by the state bonding fund. Testimony stated the bonding requirements were removed because the individuals being bonded were already covered by the state bonding fund. Although many individuals who are not required to obtain a bond do so because there is no premium charged, technically they would not need to obtain a bond.

This legislative history does not contain testimony on the two sections of law that may have provided reasoning to the contrary. Under NDCC Section 26.1-21-07, the coverage under the bonding fund may be greater, but not less than, the amount required by law for the position. Under Section 26.1-21-10, the provisions of the chapter on state bonding "and of any statute requiring a bond constitute the bond of each and every public official for the purpose of any law of this state requiring such bond and constitute the entire contract between the fund and the state or its political subdivisions, respectively, as the obligee in any such bond." These two sections show the consideration of other statutes that require bonds and place certain conditions on bonds and appear to incorporate them into a bond obtained under the state bonding fund.

Bonding of Private Sector Licensees

State law also requires that certain persons be bonded to be licensed to engage in certain kinds of work. For example, NDCC Section 55-08-05 requires concessionaires in state parks to be bonded in an amount determined by the director of the Parks and Recreation Department. In addition, many cities require certain persons to be licensed to engage in certain kinds of work. The City of Bismarck requires concrete companies to be bonded to work on sidewalks that are in the city right of way. These persons must obtain bonds at their personal expense from the private surety bond market. Premiums and availability of bonds in the private market are determined by the type of activity to be bonded. Generally, surety bonds may be obtained through insurance companies located in this state.

A surety bond is a three-party agreement in which the issuer of the bond--the surety--joins with the second party--the principal--in guaranteeing to a third party--the obligee--the fulfillment of an obligation on the part of the principal. The obligee is given the benefit of the bond and is protected by the bond against loss.

The reasons for requiring surety bonds from licensees can be divided between the intended beneficiary of the bonds--consumers and the governmental entity. Consumers are protected because they can make a direct claim to a surety company if the licensee acts contrary to the law or the work is not completed in a workman-like manner. Generally, insurance cannot cover code violations. Insurance covers liability caused by damage to property or to persons. Bonds may cover code violations.

The bonding of licensees provides a benefit to governmental entities because most licenses are conditioned on having a bond. If the bond is revoked, then the person is no longer licensed by the governmental entity. Bonding companies encourage compliance with applicable laws and have the option to withdraw a bond if there is a deficiency or noncompliance. This aids the governmental entity in the enforcement of its laws. In addition, before a bonding company will issue a licensee a bond, the bonding company will conduct an investigation of the licensee's financial and technical ability. Because the bonding company has the right of recourse against a bonded person who has a claim on the bond, the bonding company needs to ensure that the licensee can be financially responsible for the amount of the bond.

Testimony and Committee Discussion

Review of Statutory Bond Requirements

The committee reviewed every North Dakota Century Code provision requiring bonds.

The committee reviewed each statute to determine who obtains the bond, if there is an option other than a bond, if there is a related entity that has discretion over the bond or the amount of the bond, the type of bond, and whether the bond is mandatory or permissive. In addition, the committee reviewed each statute to determine whether a bond is required of a public entity and if so, whether the entity was a state or political subdivision entity.

As an example, the committee reviewed the bond of the Secretary of State. Before 1999 the Secretary of State was statutorily required to be bonded for $10,000. According to the Secretary of State, this statutory requirement was removed in 1999 because the amount of the bond had not changed since 1943 and did not seem to be appropriate because since that time the budget of the office of Secretary of State has increased to more than $4 million.

The committee also reviewed the bond of county coroners. Although the county coroner is required to be bonded for $500, this amount is a minimum. In fact, a county coroner is covered under the blanket bond of the county.

Review of State Bonding Fund

The committee reviewed whether the state bonding fund is an appropriate entity to provide bonds under the reviewed statutes. The issues under this area of study were whether private entities should be included in the state bonding fund and whether public entities should be bonded under the state bonding fund or should be required to buy private bonds.

The committee reviewed whether private entities should be included in the state bonding fund. The committee was informed that the Insurance Commissioner could handle the inclusion of other groups in the state bonding fund. The committee had a number of concerns with the idea of including private entities in the state bonding fund. Committee discussion questioned the unknown aspect of whether the fund is actuarially sound and whether adding additional entities to coverage should be done until it is known whether the fund is actuarially sound. There could be enormous liability for the inclusion of entities such as grain elevators. Another concern was the state competing against private industry for issuance of bonds. In addition, there was the major issue of whether to make inclusion in the state bonding fund for other entities voluntary or mandatory.

The committee decided to review any request by any group that is privately bonded to be included in the state bonding fund. A request of this type, however, was not made by any privately bonded group.

The committee reviewed private bonding as an alternative and decided to review the state bonding fund to determine if any changes were needed to better the operation of the fund.

North Dakota is unique in having a state bonding fund. Most other states use the open market to provide bonds. This is the case for private entities in this state for which there are 106 companies that issue fidelity bonds, with $2.2 million in premiums written. Surrounding states bond through private bonding companies. Montana purchases a fidelity blanket bond for all state employees which has a $2 million limit per occurrence. The counties in Montana buy a bond in the amount of $5 million through an association of counties. Other political subdivisions cooperate through different groups to purchase bonds on the private market. South Dakota purchases a blanket bond for public employees in the amount of $100,000 per occurrence and for specific positions that handle more money the state purchases bonds in higher amounts. The cost per year is approximately $50,000 for coverage of almost 13,000 employees. Minnesota provides protection through a master property policy for public employees in the amount of $25,000 per occurrence. Certain employees with more opportunity for defalcation have a higher bond.

The committee reviewed the approximately 2,920 entities covered by the state bonding fund and the amounts for which they are bonded. The committee was informed that most governmental entities are bonded through the state bonding fund because there is no

premium charge for the bond and because political subdivisions, such as counties, purchase a blanket bond that covers every employee. The amount of coverage varies greatly. Some amounts are extremely high because there is no premium charged for the coverage. Ironically, some of the amounts are extremely low because there is no premium charged. The reason being that if a bond does not cost anything, there is no reason to review the bond. The state bonding fund does not challenge or have guidelines for the appropriateness of the amount of bond requested.

The committee was informed that the exposure to liability of the state bonding fund is $575,550,821 and there has never been an actuarial study to determine if the fund is financially sound. The committee was informed that if the fund were to be depleted below the $2 million trigger, the Insurance Commissioner would conduct an actuarial study to determine premiums. In addition, the committee was informed the Insurance Commissioner can reinsure for large losses but has not.

The main tool to prevent large claims is regular audits and controls on handling of funds. The committee was informed that as a general rule every entity should have a bond of at least 25 percent of the money in control of the public officials or employees for which the bond is requested for the preceding year based on daily balances. Generally, this is the amount recommended by the State Auditor when conducting an audit. Because of this recommendation, most state entities generally update bonding amounts after an audit which is done on a biennial basis. In addition, counties, cities, most school districts, and park districts are audited on a biennial basis. These entities are audited by the State Auditor or a private firm. Townships and other political subdivisions are not required to have a biennial audit.

The committee reviewed claims against the state bonding fund. In early 2004 there were 23 claims against the state bonding fund for a total of $522,132. The claims were for theft of money and the amount of these claims could change during the legal process. At least one-half of that amount will be paid this biennium because of one claim from the Fargo Park District. This will be the largest claim ever paid by the bonding fund. The claim is for approximately $250,000, consisting of $226,000 plus interest from the date of the claim.

The funds in the bonding fund at the beginning of the 2003-05 biennium totaled $5.3 million. The Legislative Assembly has provided for the transfer of $2.8 million from the bonding fund to the general fund for the biennium. The committee was informed that this transfer, in addition to the 23 claims, may result in the fund falling below the $2 million trigger, but the trigger most likely will not be reached this biennium because of projected investment income of the fund.

The committee was informed it is very difficult to collect on claims paid because the party that stole the money usually does not have any money. Some individuals are incarcerated. In addition, the legal system must be used to collect from these individuals and that is administratively burdensome. The recovery rate compares with the 10 percent recovery rate of the private sector.

The committee considered a bill draft to clarify state bonding law, to remove references to the requirement for a bond for a particular state public employee or officer, to apply the requirement for a bond generally to all public employees and officers, and to provide guidelines to determine an appropriate amount for a requested bond. The bill draft created an application procedure under the state bonding fund. The goal was to have an application procedure in which an obligee requests a bond in an amount based on the amount of money and property handled and the opportunity for defalcation. The bill draft placed more responsibility on the obligee to provide information to the Insurance Commissioner and to review matters relating to the bond. The main substantive provisions required an application on a biennial basis or when there is a change in coverage requested and required the application to include certain information, including 25 percent of the money in control of the public officials or employees for which the bond is requested for the preceding year based on total monthly balances. The bill draft exempted state agencies and political subdivisions from the application procedure if another statute places the bond within the discretion of that state agency or political subdivision. The bill draft also continued the concept initiated by Senate Bill No. 2360 in 1999 to remove specific references to state officials being required to have a bond. Under the bill draft, governmental entities are required to have a bond en masse. The bill draft also provided that interest on a claim runs from the date of filing of the claim. The bill draft also limited liability of the fund to two years before the date of filing of the claim. This places the responsibility to find wrongdoing within two years on those in a position to find the wrongdoing.

The committee amended the bill draft by adding a sentence that coverage for a state legislative or judicial branch agency may be determined by the Legislative Council or Supreme Court, respectively. The addition of this sentence confirms that legislative and judicial branch agencies are included in the state bonding fund and respects concerns over separation of powers.

The committee received testimony in support of the bill draft from the Insurance Department. The testimony included a suggested change that the language that required the application to include a list of conditions covered under the bond, beyond the basic blanket bond conditions, would be difficult for most agencies and political subdivisions to compile. The committee was informed that this list of conditions may make the application procedure administratively burdensome for the person completing the application and for the Insurance Department by having to answer questions about the list of conditions. The committee amended the bill draft to remove that language.

Review of Private Surety Bonds

The committee reviewed whether private entities within the state provide bonds for public officials and other individuals required to be bonded. This area of study applied to persons required to be bonded but not bonded through the state bonding fund. The committee reviewed alternatives to obtaining bonds from private companies, including the state bonding fund, or through separate bonding or recovery funds for each endeavor.

State law requires that certain persons be bonded in order to be licensed to engage in certain kinds of work. These bonds are obtained through private surety companies and not through the state bonding fund. Two examples of occupations that do not buy surety bonds but instead pay into a special fund that pays for certain bad acts are electricians and real estate brokers and salespersons.

North Dakota Century Code Chapter 43-09 provides for the regulation of electricians. Electricians are required to be licensed under Section 43-09-09. Under Section 43-09-14, before doing electrician work, a master electrician must deposit a bond of $5,000 and a Class B electrician must deposit a bond of $4,000 with the State Electrical Board. In addition, a master electrician must deposit $50 and a Class B electrician must deposit $40 in lieu of a surety bond. This deposit is placed in a special fund to be used for the completion of installations abandoned by electricians in the amount of $5,000 for a master electrician and $4,000 for a Class B electrician. The deposit is waived if the special fund exceeds $50,000. Presently the fund is over $50,000.

A representative from the State Electrical Board explained that the special fund was created to allow safety problems caused by improper installations to be addressed quickly, e.g., when a bond was required, bond companies took too much time in paying claims. Although electricians are exempt from surety bonds, under NDCC Section 43-09-20 a master electrician must have public liability insurance of $100,000 and a Class B electrician must have public liability insurance of $50,000.

Real estate brokers and salespersons are regulated under NDCC Chapter 43-23. Brokers and salespersons are not required to be bonded; however, the secretary-treasurer of the Real Estate Commission must be bonded in the amount of $60,000. The secretary-treasurer handles fees collected from brokers and salespersons, including a fee of $20 which is credited to the education, research, and recovery fund. The fee is not required for the renewal of a license unless the fund is less than $60,000. Under Section 43-23.2-03, a person who obtains a final judgment from a court against a broker or salesperson on the grounds of fraud or dishonesty may file an application with the court for payment out of the fund for a loss up to $15,000 that is unpaid on the judgment. Although brokers and salespersons are exempt from purchasing a surety bond, under Section 43-23-19 brokers and salespersons must carry errors and omissions insurance.

The committee also reviewed bonds provided by private surety companies in this state. This review focused around the bonds provided to auctioneers because the study resulted from concerns of auctioneers. It was noted that any private entity could come to the Legislative Assembly and ask for the removal of a bond requirement as individuals in the storage business had done in the past. Auctioneers were the only group to bring the issue of bonds provided by private surety companies to the committee.

Review of Appropriateness of Bonds

The committee reviewed whether the bonds required by statute are appropriate and necessary. The committee received testimony on the bond requirements for auctioneers and auction clerks. Auctioneers indicated that they are required to purchase bonds that are not used and bonds are only available from out-of-state companies. The committee was informed the reason a bond is never used is because if a bonded auctioneer has a claim on that auctioneer's bond, that auctioneer must pay back the amount of the claim to the surety or lose the bond. If an auctioneer is not bonded, an auctioneer loses the auctioneer's license.

There are 149 companies that are licensed to issue surety bonds in this state, with $8.83 million in premiums written. Of the companies doing business in this state for surety and fidelity bonds, one is domiciled in North Dakota--Dakota Fire Insurance. The committee was informed that the dominant bond company in the state is Western Surety Company. Western Surety Company had surety premiums written in 2003 of $1,067,000 and losses of $72,000.

In particular, there are 21 companies that provide bonds to auctioneers and auction clerks; however, Western Surety and Merchants Bonding Company are the most common. Western Surety is in South Dakota and Merchants Bonding Company is in South Carolina.

Western Surety is one of the oldest and largest surety companies. In 1997 Western Surety became a wholly owned subsidiary of CNA Surety. There are 252 insurance agents in this state which sell Western Surety bonds. The commission paid to an agent is 20 to 40 percent of the price of the bond. In 30 states, Western Surety pays 12 percent out on claims against the bonds of auctioneers. Although auctioneers have a high amount of claims compared to other bonded individuals, Western Surety has not paid a claim on a bond in North Dakota for an auctioneer in recent years. There have been no claims against auctioneers in this state in the last four years.

The committee was informed the prices of the bonds are based on what the market will bear and what is the cost to a surety company. Western Surety charges at least $100 for a bond. The present bond required for an auctioneer is in an amount not less than $5,000 and the bond required for an auction clerk is in an amount not less than $10,000. The $5,000 limit for auctioneers and $10,000 limit for auction clerks is an aggregate liability for a year. As a matter of practice, an auctioneer

purchases a $5,000 bond and purchases a $10,000 bond for the clerk. Each bond costs $100 if purchased from Western Surety. The cost for a larger bond is $5 per $1,000 of coverage with a $100 minimum. There are companies that will write an auctioneer bond for approximately $50. Western Surety's market share has dropped from 80 percent of the market 15 years ago to 63 percent.

The committee was informed the amount of coverage required for bonds may not be sufficient. There is a concern that auctioneers are not bonded enough because they sell single items, such as tractors that cost between $80,000 and $100,000. Auctioneers would pay an enormous amount for a bond that provided full coverage for customers. Most states require bonds for auctioneers in the range of $10,000 to $20,000. The highest bond requirement is approximately $25,000.

Committee discussion included that $10,000 in bond coverage does not cover the amount of money brought in during most sales and raising the amount of bond may place an unnecessary burden on auctioneers. In addition, increasing the bond for auctioneers would set a precedent that would place a burden on other businesses in this state. Committee members stated opposition to raising any required minimum for a bond.

A representative of Western Surety provided testimony on bonds provided to auctioneers. The committee was informed that a surety bond is a form of public protection. An auctioneer bond is to ensure that a consumer receives proper payment for goods sold by an auctioneer and in some states the bond covers fees and taxes that are paid to the state. One of the major protections afforded by a bond is the review and investigation of the person bonded by a surety company. A bond is similar to a bank issuing a letter of credit and there should not be any claims on a bond if the surety company does a good review before issuing a bond.

Western Surety evaluates three areas when underwriting. The first area is the number of years in business and the reputation of the person seeking the bond. The second area is the financial stability and ability of the person seeking the bond. The third area is considering the agent's recommendations as to character issues. A bond is canceled if a claim is made on a bond because it is shown that a person is a harm to the public.

The committee considered allowing auctioneers and auction clerks to have a special fund instead of using a private surety company. The committee was informed that auctioneers may be interested in applying the concept of a special fund, such as used by electricians, to auctioneers.

Some states have special funds, called recovery funds, instead of requiring a bond. Louisiana had a recovery fund but it is returning to private bonding. Minnesota has a recovery fund for contractors and Virginia has a recovery fund for motor vehicle dealers and both states are investigating a return to private bonding. A negative with a recovery fund is that most recovery funds require that all legal means be exhausted before there is recovery from the fund. In other words, a person first must obtain a judgment in a court.

The committee considered allowing auctioneers and auction clerks to have insurance in lieu of bonds, similar to real estate salespersons. A real estate salesperson is required by law to have errors and omissions insurance but this insurance is relatively expensive compared to the cost of a bond. Some auctioneers already have errors and omissions insurance because they are also real estate salespersons. Insurance is a narrowly tailored contract for a particular purpose, however, and an errors and omissions policy for a real estate agent most likely would not cover errors and omissions of an auctioneer. In addition, the committee was informed that most auctioneers carry liability insurance.

The auctioneers were requested to provide suggested legislation to remedy the concerns relating to auctioneer's bonds. As a result of that request, the committee considered a bill draft that provided auctioneers and auction clerks the option of providing at least $100,000 per occurrence and $500,000 annual aggregate limit of public liability insurance and errors and omissions insurance instead of providing a bond. The minimum limit of public liability insurance is the same minimum limit as for a master electrician. The minimum limit for errors and omissions insurance is the same as is required of a real estate broker or salesperson.

A representative of Western Surety provided testimony against the bill draft. The committee was informed that bonds provide coverage if a dishonest act occurs, while insurance policies do not provide this coverage. The committee also was informed that insurance does not cover violations of law, as does a bond. Premiums for surety bonds are largely a service charge for weeding out unqualified candidates. This process provides consumers a degree of certainty they are operating with a reputable business.

Committee discussion included that the cost of $200 to cover an auctioneer and clerk seems to be a minimal amount to protect the public. Committee discussion included consideration of the fact that although the state needs consumer protection, auctioneers do not need to pay for something to keep them honest.

The committee concluded that the bill draft will not affect many auctioneers but may reduce costs for auctioneers who are real estate agents.

Recommendations

The committee recommends Senate Bill No. 2043 to create an application procedure under the state bonding fund.

The committee recommends House Bill No. 1039 to allow auctioneers and auction clerks the option of providing insurance instead of bonds.

AGRICULTURAL INSPECTION AND STANDARDS FUNCTIONS TO PUBLIC SERVICE COMMISSION STUDY

Senate Bill No. 2008 directed a study of the feasibility and desirability of transferring inspection and standards functions performed by various state agencies to the Public Service Commission, including the potential

cost-savings and efficiencies that may be realized by training and certifying employees to conduct multiple inspection duties. This study was limited to agriculturally related functions. There was testimony during the legislative session to the effect that there may be redundancy in having multiple agencies inspect anhydrous ammonia tanks.

Statutory Framework

Under NDCC Section 64-02-02, all weighing or measuring devices in this state must be supervised and controlled by the Public Service Commission. A weighing or measuring device, as defined in Section 64-02-01, is any scale, weight, measure, instrument, or device used or offered for use for weighing or measuring in commerce. Under Section 64-02-13, the owner of any weighing or measuring device is responsible for its accuracy and condition and must have it tested at least every 15 months. The commission or the owner may have the device tested annually. The commission has jurisdiction over measuring and weighing agricultural commodities and products, including food and seed.

Under NDCC Section 64-02-10, the Public Service Commission collects fees to test the following agriculturally related scales, devices, or meters: railroad track and truck scales used to haul agricultural products, livestock scales used by auction markets, scales used by elevators, scales used in the retail sale of bulk food or seed, meters used to measure agricultural chemicals or liquid fertilizer, and other agriculturally related scales, devices, or meters. Under Section 64-02-12, the fees collected by the commission are deposited in the general fund of the state treasury. There are some exceptions, however, to the commission's authority over weights and measures.

Under NDCC Section 64-02-13, only the State Dairy Department may inspect and test farm milk bulk tank equipment. Under Section 64-02-13.1, weighing or measuring devices used to conduct sales by a transient vendor are exempt from the authority of the commission. Under Section 64-02-01, a transient vendor is a wholesale or retail seller of produce, fruit, nuts, or seafood which sells to the public from a temporary location, on a seasonal basis, and is open fewer than 120 business days each year. This may include the scales used by sellers at a farmers' market.

Under NDCC Section 19-01-18, the State Department of Health at the request of the Public Service Commission must perform the duties relating to weights and measures as usually performed by the commission. The fees collected by the department are kept, accounted for, and disposed of as provided in Chapter 19-01. Under Section 19-01-07, all fees collected under Chapter 19-01 are placed in the general fund. However, if the funds are accepted for contract services of analytical and inspection work, the funds are deposited in the operating fund of the State Department of Health.

Possible Function Transfers

In the same way that it may be desirable for the State Department of Health to inspect scales when it is doing health-related inspections of food-related businesses, the study directed a look at the feasibility and desirability of transferring inspection and standards functions to the Public Service Commission when the commission is otherwise conducting inspections at agriculturally related businesses.

The commission regulates a number of agriculturally related businesses--grain elevators, facility-based grain buyers, roving grain buyers, hay buyers, auctioneers, and auction clerks. The main form of regulation of these entities is the licensing of these entities. As a rule, the commission may inspect the records of these entities. When the commission is inspecting the records of one of these entities, there may be some inspection and standards function done by some other agency that the commission may do to gain efficiency besides any internal efficiency gained by conducting the weights and measures functions the commission already performs. However, any new function would not be related to anything the commission staff is trained to do at present. To the contrary, there are similarities between the regulation by the Seed Commissioner of wholesale potato dealers and the regulation by the commission of grain or hay buyers, and this may be an area for consolidation.

An example of when there are multiple agency inspections for which the Public Service Commission conducts an inspection is in the case of anhydrous ammonia storage facilities. The Public Service Commission makes regular onsite tests of scales and meters used to measure the sale of anhydrous ammonia. In addition, there are onsite inspections under the anhydrous ammonia tank inspection program. The anhydrous ammonia tank inspection program provides initial and periodic inspections of anhydrous ammonia storage facilities, including storage containers, system piping, safety equipment, and nurse tanks. The focus of the inspection is safe storage. The program is administered and enforced by the Agriculture Commissioner, and the inspection is done by the Insurance Commissioner through the boiler inspection program.

Under NDCC Section 19-20.2-01.1, the inspection program only applies to anhydrous ammonia storage facilities exceeding a capacity of 6,000 gallons. Under Section 19-20.2-07, these tanks are periodically inspected at least once every five years. The boiler inspector may inspect a farm transportation wagon or vehicle designed to apply anhydrous ammonia which is in the vicinity of the facility during the inspection. Under Section 19-20.2-08, all fees collected for licensure are used by the Agriculture Commissioner for the inspection program. In addition, under Section 19-20.2-08.1, the anhydrous ammonia tonnage tax of 20 cents per ton under Section 19-20.1-06 must be deposited in the anhydrous ammonia storage facility inspection fund.

House Bill No. 1352, enacted during the 2003 legislative session and codified as NDCC Section 19-20.2-11, provides for the Insurance Commissioner to identify a

critical methamphetamine users' zone in this state and to establish appropriate security measures for owners and users of anhydrous ammonia nurse tanks in the zone. These security measures are implemented as part of a pilot project and include the requirement of locks on nurse tanks.

Theoretically, the Public Service Commission could take the functions of the boiler inspector. However, the commission would need to have a person specially trained as a boiler inspector, and the Insurance Commissioner would still need a boiler inspector to inspect boilers that are not inherently agriculturally related.

Testimony and Discussion

Anhydrous Ammonia Tank Inspections

The committee was informed there have been complaints about the number of inspectors that inspect a certain business, such as a grain elevator that sells anhydrous ammonia and has gas pumps and a convenience store. This business could have inspectors come from the anhydrous ammonia tank inspection program, a heavy-duty inspector, a light-duty inspector, and a private inspector. In addition, business owners have expressed frustration over the increased costs of having law enforcement, the Public Service Commission, and the boiler inspector inspecting anhydrous ammonia tanks.

Committee discussion included that while it appears there are too many inspectors for anhydrous ammonia tanks, anhydrous ammonia is a dangerous commodity that requires special skills to inspect for different purposes.

The committee received testimony on agriculturally related inspection and standards functions administered by the Public Service Commission. In addition, the committee received testimony on revenues and expenses associated with the Public Service Commission grain elevator licensing functions and the agricultural-related weights and measures functions. The committee was informed that the Licensing Division does onsite inspections of the records of grain warehouses not inspected by the federal government. During this inspection, inspectors do some measuring to determine the capacity of an elevator. These inspections are done every 12 to 15 months. The Testing and Safety Division's weights and measures inspections are conducted by five inspectors--two heavy-duty inspectors and three light-duty inspectors. These inspectors conduct over 22,000 inspections per year. Each device must be inspected every 12 to 15 months. There are licensed service providers that may do inspections, but they charge more than the state. The Testing and Safety Division also conducts pipeline safety inspections to ensure the safety of pipelines.

The committee was informed that one entity could do all inspections for anhydrous ammonia facilities, but inspections would take multiple inspectors because of the different skills required for the different inspections. Under the Public Service Commission, pipeline safety inspectors could do safety inspections and weights and measures inspectors could do inspections for measuring devices on anhydrous ammonia tanks. As for the Insurance Department, the boiler inspector has the same skill set as needed for anhydrous ammonia tank safety inspection in that both involve pressure vessels.

The committee received testimony on the boiler inspection program. The anhydrous ammonia tank inspection program began in 1995. The boiler inspection program began in the Workers Compensation Bureau and was transferred to the Insurance Department. The boiler inspector inspects 8,700 objects per year. Not all insured boilers are inspected by the inspector, but the boiler inspector reviews the paperwork on insured boilers inspected by insurance companies. Generally, the boiler inspector accepts inspections done by insurance companies.

The committee concluded that the anhydrous ammonia tank inspection program appears to be a good fit with the boiler inspector. Committee discussion included consideration of transferring of the boiler inspection program to the Public Service Commission, which might result in some efficiencies, but the study was limited to agriculturally related functions. If only agriculturally related functions were transferred, there would appear to be no efficiencies gained by the transfer of the boiler inspection program.

The Public Service Commission has made an effort to make the inspection program self-sufficient. The light-duty fees were increased by 10 percent and the heavy-duty fees were increased by 60 percent during the 2003 legislative session. Although the fees obtained from weights and measures inspections are deposited in the general fund, the inspections are self-funding due to the most recent increase in fees. This is true inasmuch as the fees cover the costs of the inspections and inspectors but do not cover all administration costs. It was noted that the boiler inspection fees of the Insurance Department also were increased during the 2003 legislative session.

Wholesale Potato Dealer Licensing

At the request of the Seed Commissioner the committee considered a bill draft that would have transferred regulation of wholesale potato dealers from the State Seed Department to the Public Service Commission. The idea to transfer all duties relating to wholesale potato dealers to the commission surfaced with a request that the bonding duties be transferred. Because the commission has experience in administering other bonded entities, it was argued that the commission would be better suited to administer the bonds for wholesale potato dealers.

The Seed Commissioner provided testimony on the bill draft. The committee was informed that the bill draft was meant as a point of discussion and after discussing the concept of the bill draft with the Public Service Commission, the commission and the Seed Commissioner agreed to work together to make the law more effective. The committee was informed that the bill draft may not be adequate because it provided for a straight transfer of duties and more may need to be changed

because at present the regulation of wholesale potato dealers is not an effective program.

The main reason the Seed Commissioner requested the transfer was because of large processors purchasing large volumes of potatoes. The current program is not fitted to these types of entities. Historically, the State Seed Department has regulated wholesale potato dealers because the department administers most everything else related to potatoes. The committee was informed that the program has outgrown the State Seed Department because the department is a seed agency, not a regulatory agency.

Committee discussion included some support for the transfer of duties to the Public Service Commission because the sale of potatoes is the sale of commodities that are otherwise regulated by the Public Service Commission. The committee was informed that there probably will be no additional cost to transfer the present program to the commission. However, there would be additional costs if duties were added to meet the changes in the wholesale potato dealer industry. The cost depends on the regulatory scheme the Legislative Assembly decides is best.

After working on the issue, the Seed Commissioner and the Public Service Commission recommended continuing licensing of wholesale potato dealers through the State Seed Department. The committee was informed that the State Seed Department will pursue legislative action to improve producer protection with focus on major processors.

Conclusion

The committee does not make any recommendation relating to the transfer of agriculturally related standards and functions to the Public Service Commission.

STATE SEED DEPARTMENT STUDY

Senate Concurrent Resolution No. 4016 directed the Legislative Council to study those provisions of NDCC Title 4 which relate to the powers and duties of the State Seed Commissioner and the State Seed Department. The reasons for this study were that seed laws have been adopted over the years without regard to the interrelationship of the laws; the laws do not have clear objectives or directives for administration; and the laws are duplicative, inconsistent, illogically arranged with unclear intent and direction, and inapplicable to the manner in which agriculture is conducted in the 21st century. The legislative history reveals that the intent of the study was to update language and not make major changes in policy.

Recent Legislation

During the 2003 legislative session five bills were introduced which affected the State Seed Department--Senate Bill Nos. 2124, 2256, 2326, and 2206 and House Bill No. 1026. Four of the bills passed and one failed to pass.

Senate Bill No. 2124 updated references to a federal law governing tolerances for seed labeling. This state's tolerances are the same as those used under the Federal Seed Act except that the tolerance for yellow starthistle must be zero, and the State Seed Commissioner may establish tolerances that are stricter than the federal Act.

Senate Bill No. 2256 exempted from this state's open records requirements the records of any plant or seed analysis or testing, any variety or diseased determination conducted by the State Seed Department on a fee-for-service basis for a nonpublic person, and information received by the State Seed Commission from a nonpublic person that the nonpublic person determines is proprietary or trade secret information.

Senate Bill No. 2326 updated and clarified the statutes regarding the licensure of wholesale potato dealers and the process to be followed by the Seed Commissioner in taking action against the bond of a licensed dealer.

Senate Bill No. 2206 removed the sunset date of August 1, 2003, and retained the tolerance for restricted noxious weed seeds at 25 seeds, instead of a return to 90 seeds, per pound.

House Bill No. 1026, which failed to pass, would have required the creation of a transgenic wheat board. The Seed Commissioner was to be a member of the board.

During the 2001 legislative session, seven bills passed which related to the State Seed Department.

Senate Bill No. 2235 authorized the Seed Commissioner to inspect, analyze, and verify the genetic identity or physical traits of seeds or crops.

Senate Bill No. 2169 expanded the State Seed Arbitration Board to include the Seed Commissioner.

Senate Bill No. 2103 authorized the Seed Commissioner, with the approval of the State Seed Commission, to establish and charge fees for making commodity grade inspections.

Senate Bill No. 2104 provided that the director of the Experiment Station is a voting member of the State Seed Commission. The bill also removed the requirement that the commission must hold meetings during each November and June and requires instead that the commission hold meetings at least twice each calendar year.

Senate Bill No. 2389 required that the Seed Commissioner permit a North Dakota potato grower to sell or transfer certified seed potatoes to another North Dakota potato grower who may, in turn, plant the seed potatoes only for commercial production.

House Bill No. 1442 established procedures that must be followed if a person believes that a farmer has infringed upon the patent applicable to a genetically modified seed.

Senate Bill No. 2204 directed the State Seed Commission to establish, for annual crops and perennial crops, a seed classification system that references tolerances for each restricted noxious weed species.

Trends in Budget and Fees

The apparent trend is that the total appropriated funds for and the actual expenditures of the State Seed

Department have remained constant for the last eight budgeted years. Within that overall stability, there has been growth in the laboratory services program but a reduction in the potato program. There has been a reduction in the field seed program; however, during the 1999-2001 biennium the seed laboratory and diagnostic laboratory were moved from the field seed program into other programs.

There have been two fee increases in the last 10 years at the State Seed Department. The revenues of the department primarily consist of certification and inspection fees. The first increase was for fees related to potato field inspections. The fee was increased from $15 to $18 an acre effective June 2002. The second increase was for laboratory fees. Generally, these fees were increased by $1 to $2 per test for seed laboratory determinations and slightly more for certain diagnostic laboratory determinations.

The two noteworthy accomplishments highlighted in the audit of the State Seed Department were technology upgrades, including the construction of a web site and completed inspections and final certifications of record acres and bushels of certified seed while operating expenses remained almost static during the period.

Statutory Framework

In 1931 the Legislative Assembly established the State Seed Department. The department's main offices are located on the campus of North Dakota State University in Fargo. In addition, the department operates a regional facility in Grafton where the primary function is the support of field operations for the potato certification program. The main field operation is to provide the potato industry with official grade inspection services.

The State Seed Department is managed by the Seed Commissioner and is under the control of the State Seed Commission. The commission is a nine-member commission that sets policy guidelines, approves budgets, approves major program changes, approves fee schedules, and appoints the commissioner. The commission is composed of members of various industries that represent a broad cross-section of agricultural commodities grown in this state.

There are a number of chapters and other provisions of the North Dakota Century Code which relate to the State Seed Department. These chapters include NDCC Chapters 4-09, 4-09.1, 4-10, 4-11, 4-25, 4-26, and 4-42. These seven chapters may be divided into five different programs--the potato program, the field seed program, the laboratory services program, the regulatory program, and the administration program. The potato program provides for field inspection and certification of seed potatoes, grade inspections for seed growers and commercial growers and processors, licensing and bonding of wholesale potato dealers, approval for seed quality of imported potatoes, winter disease testing, promotion of North Dakota-certified potato seed, and the production and distribution of foundation seed stocks.

The field seed program provides for field inspection and certification of crops, final certification or grading of seed, inspection and approval of certified seed conditioning plants and bulk retail facilities, acceptance of imported seed, development of custom programs, and promotion of North Dakota-certified seed.

The laboratory services program provides diagnostic laboratory testing to determine seed quality. Testing includes germination testing, seed disease and pathology testing, seed trait analysis, and genetically modified organism event testing.

The regulatory program enforces state and federal seed laws. The field staff inspects seed lots offered for sale to ensure proper labeling and adherence to state standards for purity and other quality factors.

The administration program provides for the administration of the facility, equipment, technology, and support services of the department.

Chapter 4-09

North Dakota Century Code Chapter 4-09 primarily relates to the basic structure of the State Seed Department, designates the department as the state agency responsible for seed certification and seed-related issues, provides enforcement authority to the department, and establishes seed labeling and sale regulations for the consumption and use of seed.

Chapter 4-09.1

North Dakota Century Code Chapter 4-09.1 provides the Seed Commissioner with the ability to establish commodity grade inspection services for the agriculture industry. This chapter, in addition to Chapter 4-42, expands the duties of the State Seed Department beyond seed certification and regulation. In practice, this chapter has been used to establish commodity standards in North Dakota Administrative Code (NDAC) Article 74-06 for rapeseed, buckwheat, and mustard.

Chapter 4-10

North Dakota Century Code Chapter 4-10 is similar to Chapter 4-09 except that it provides the commissioner authority to act as the certifier and grade inspector of potato seed. The chapter outlines the specific responsibilities of the commissioner in seed certification, labeling, grading, regulation, enforcement, and fee disposition in much the same manner as Chapter 4-09. The significant differences between the chapters are contained in Sections 4-10-04 and 4-10-06.1.

Section 4-10-04 designates a system of potato grades which is modeled after the United States Department of Agriculture standards. Potato grade designations differ from other certification standards in that each grade denotes a series of physical qualities that are standard throughout the industry as opposed to health and disease standards that may vary from state to state. The grade standards generally reflect physical appearance, such as potato size, defect, or internal problems that may not be readily visible to a buyer.

Section 4-10-06.1 outlines the requirements and the exceptions to the requirements for a producer to plant certified seed on commercial acreage. In general, the

seed potatoes must be certified or field-inspected to be planted for the purpose of selling the crop.

Chapter 4-11

North Dakota Century Code Chapter 4-11 provides the Seed Commissioner the authority to license and regulate persons or companies engaged in the commerce of potatoes in wholesale quantities. Chapter 4-11 operates similarly to provisions covering the Public Service Commission's regulation of grain buyers and hay buyers and the Department of Agriculture's dairy licensing. Chapter 4-11 was rewritten during the 2003 legislative session in Senate Bill No. 2326.

Chapter 4-25

North Dakota Century Code Section 4-25-02 applies to seed transactions involving nonresident seed dealers. The rules contained in NDAC Chapter 74-02-02 which effectuate this section relate to the licensing and bonding of nonresident dealers.

Chapter 4-26

North Dakota Century Code Chapter 4-26 provides for the formation and operation of a seed control area for Irish potatoes. This chapter describes the specific steps in formation, the powers and duties of the Seed Commissioner in the process, and the duties of the Seed Potato Control Area Committee in the operation of the control area. One potato control area presently exists in this state.

Chapter 4-42

North Dakota Century Code Chapter 4-42 allows the State Seed Department to expand services beyond seed certification and regulation to provide the agriculture industry with services related to the testing and to identify preservation of agricultural commodities. The chapter outlines the process by which the Seed Commissioner establishes testing, sampling, field inspection, labeling, and identity preservation services.

Other Provisions

North Dakota Century Code Section 4-24-13 provides for the procedure by which a person holding a patent on a genetically modified seed may enter upon the land farmed by another for the purpose of obtaining crop samples.

Testimony and Discussion

The committee received testimony on the scope of the study from the Seed Commissioner. The committee was informed that the State Seed Department has tried to do housekeeping changes in the law as changes are made in the seed law during each legislative session. However, the department has recently done major work on the statutes relating to noxious weeds and wholesale potato dealers.

The committee considered a bill draft that clarified statutes relating to seed regulation. The bill draft was prepared after reviewing state laws on seed regulation, excluding potatoes. Although the bill draft contained substantive changes requested by the State Seed Department, most of the changes were meant to clarify the language. The substantive changes included providing compensation to the State Seed Commission members at the rate of $75 per day, requiring seed handlers to keep records for three years instead of two years, and lengthening the time allowed between a germination test and the sale of seed. The per diem of $75 was set after reviewing other per diems in the North Dakota Century Code of approximately $50 to $100 and choosing a midpoint. In addition, the most common amount of per diem for commissions similarly situated to the State Seed Commission is $62.50 and $75. The per diem was created to help cover the expense of hotel rooms that exceed the state rate and address a concern in the department's last audit report. The increase of duration of time from two to three years for seed handler records retention was to make the records retention uniform with federal law and other states' laws.

The increase in time between germination tests, generally from 9 to 12 months, is more workable for the industry. The committee was informed that the increased time for the sale of seed from a germination test is not detrimental to consumers because the labeler is still responsible for the condition of the seed regardless of the time of the germination test. However, after further consideration, the State Seed Department reversed the position of extending germination testing and proposed a change to return to 9-month germination testing instead of the proposed change of 12 months.

The committee was informed that all states vary as to germination testing for seeds. Minnesota and Montana are 12 months and South Dakota is 9 months on some and 12 months on others. A seed company must label as to the law of the receiving state. The committee was informed that seed companies are accustomed to the nine-month germination testing standard in this state.

The committee was informed that the 12-month germination testing standard was considered to provide consistency. However, a consumer protection issue is addressed by a nine-month standard. Soybeans and edible beans are fragile and the 12-month standard may not provide adequate consumer protection. The main issue with a 9-month or 12-month standard is seed carried over from one year to another. A 12-month standard would allow some seed to be carried over to the next year without a retest. The committee was informed that because the germination testing standard only applies to carryover seed it would only apply to a small amount of seed in limited circumstances. Those circumstances might arise if there is a shortage of seed.

The committee amended the bill draft by adding additional changes requested by the Seed Commissioner. A specific authorization for the commissioner to employ, appoint, or contract with agents was added so that the Seed Commissioner may have an agent sign vouchers. The committee was informed that in a 1998 audit the State Auditor stated that no one but the commissioner

can sign vouchers because there is no specific statute authorizing other people in the office to sign vouchers.

Recommendation

The committee recommends Senate Bill No. 2044 to clarify state seed law. The bill provides for the housekeeping and substantive changes described under Testimony and Discussion. Although the bill primarily makes technical corrections and other changes to promote consistency among the states, some substantive provisions include the provision of a per diem for seed commission members; the power of the commissioner to employ, appoint, or contract with agents; and longer periods between germination tests for certain seed.

TAXATION COMMITTEE

Although no study resolutions regarding taxation were approved by the 58th Legislative Assembly (2003), the Legislative Council assigned the Taxation Committee studies of corporate and personal income taxes, implementation and effect of the streamlined sales tax, and tax preferences for products, services, and entities.

Committee members were Senators Dwight Cook (Chairman), Ronald Nichols, Randy A. Schobinger, John O. Syverson, Harvey Tallackson, Ben Tollefson, Thomas L. Trenbeath, Herb Urlacher, and Rich Wardner and Representatives Larry Bellew, Wesley R. Belter, David Drovdal, Mike Grosz, C. B. Haas, Craig Headland, Ron Iverson, Frank Klein, Phillip Mueller, Kenton Onstad, Arlo E. Schmidt, Elwood Thorpe, Dave Weiler, Ray H. Wikenheiser, Dwight Wrangham, and Steven L. Zaiser.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2004. The Council accepted the report for submission to the 59th Legislative Assembly.

INCOME TAX STUDY

Individual Income Tax Background

In 1919 the state's first income tax law was enacted. Earned income and unearned income of individuals were taxed at different rates. In 1923 the individual income tax was revised to follow federal income tax law, the distinction between earned and unearned income was eliminated, and rates were adjusted to range from 1 to 6 percent of taxable income.

In 1933 individual income tax rates were increased, with a highest rate of 15 percent on taxable income over $15,000. In 1953 individual income tax rates were reduced, with rates set at 1 to 11 percent of taxable income. In 1973 the rates were again reduced, with a highest rate of 10 percent on taxable income over $8,000.

In 1978 state voters approved an initiated measure that reduced individual income tax rates and increased corporate income tax rates. The initiated measure adjusted the income brackets and set the highest individual income tax rate at 7.5 percent on taxable income in excess of $30,000. In 1980 the voters again approved an initiated measure, which included creation of an energy cost relief credit of up to $100 against state individual income tax liability.

In 1981 the Legislative Assembly created a simplified optional method of computing individual income taxes (the "short-form" method) which allowed most individual income taxpayers a substantial income tax liability reduction. The simplified method of computing individual income tax liability provided a tax of 7.5 percent of an individual's adjusted federal income tax liability. The preexisting method of determining income tax liability based on a percentage of federal taxable income ("long-form") was retained, and since that time taxpayers have had the option of filing under either of the two different methods.

In 1983 several enactments combined to increase individual income tax liability. The $100 energy cost relief was eliminated, the short-form return tax rate was increased from 7.5 to 10.5 percent, and equivalent increases on the long-form return brought the highest rate to 9 percent for taxable income in excess of $50,000.

In a 1986 special legislative session, legislation was passed to require mandatory state income tax withholding for all employees subject to federal income tax withholding, to increase the short-form tax rate from 10.5 to 14 percent of federal tax liability, and to increase long-form rates by a corresponding amount to provide a highest rate of 12 percent on income exceeding $50,000.

In 1987 a 10 percent surtax on state individual income tax liability was created to apply only for taxable year 1987.

In 1989 the Legislative Assembly increased the short-form income tax rate from 14 to 17 percent and increased long-form rates by corresponding amounts. The legislation imposing these rate increases was referred and defeated by the voters in the December 1989 special election.

In 2001 the Legislative Assembly, aware of the likelihood of federal income tax rate reductions and resulting impact on North Dakota income tax revenues, changed the basis for application of the "short-form" method. This change eliminated the reliance on federal income tax liability and substituted use of federal taxable income as the starting point to calculate North Dakota taxable income. This method was intended to be roughly equivalent to the previous method because it applied a set of graduated rates that were 14 percent of the 2001 federal tax rates and the rates were applied to five income brackets that mirrored federal brackets. To reflect the fact that the vast majority of taxpayers filed under the "short-form" method, the statutory reference to "optional" method of computing tax was moved from the "short-form" to the "long-form" return method. In addition, references to "short-form" and "long-form" were replaced by the Tax Commissioner with references to Form ND-1 (previously "short-form") and Form ND-2 (previously "long-form").

On May 23, 2003, Congress passed a major tax cut package (Jobs Growth Tax Relief Reconciliation Act of 2003) which reduced the tax rate for capital gains and dividends, accelerated marginal tax rate reductions, enhanced small business expensing, extended bonus depreciation, increased the child tax credit, provided temporary relief from alternative minimum tax, provided marriage penalty relief, expanded the 10 percent tax bracket, and made other changes. Because the North Dakota individual income tax was no longer tied to federal income tax liability, much of the income tax revenue reduction that would otherwise have occurred did not impact the state. However, the 2003 legislation did have an impact on North Dakota income tax revenues.

Corporate Income Tax Background

Corporate income taxes were first imposed in North Dakota in 1919, with a flat rate tax of 3 percent of net income. In 1937 a graduated corporate income tax rate structure was created with a highest rate of 6 percent. A 1978 initiated measure added a highest rate of 8.5 percent. In 1981 the highest corporate income tax rate was reduced to 7 percent for taxable income exceeding $50,000 per year. In 1983 corporate income tax rates were increased by 50 percent, with a highest rate of 10.5 percent.

Passage of House Bill No. 1471 (2003) eliminated the deduction for federal corporate income taxes paid and, except for water's edge filers, reduced corporate income tax rates beginning in 2004, with a highest tax rate of 7 percent for taxable income exceeding $30,000 per year. The 2003 changes added an additional tax of 3.5 percent of taxable income for water's edge filers, to be added to the normal rates, to take the place of the election under previous law requiring water's edge filers to give up the deduction for federal corporate income taxes paid. These changes were intended to reduce corporate income tax rates but to be approximately revenue-neutral to the state general fund.

Taxable Income of Corporations

The starting point for determination of North Dakota corporate income taxes is a corporation's federal taxable income. Corporate federal taxable income is gross income minus the wide range of deductions available under federal law. The North Dakota corporate income tax applies only to the portion of a corporation's taxable income that is derived from sources within North Dakota. 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. Because apportioning income among states is extremely complicated, apportionment factors have been developed for use among states. The apportionment factor for North Dakota is a percentage that is the average of North Dakota property, payroll, and sales compared to the corporation's total worldwide property, payroll, and sales. For a corporation electing to use the "water's edge" filing method, only the corporation's property, payroll, and sales in the fifty states, District of Columbia, and United States possessions are used in this comparison. Corporate income apportionment formulas are used by all states imposing corporate income taxes and have been adjusted by some states in efforts to encourage manufacturers to locate in those states.

Combined Reporting Requirements

A corporation that is part of a unitary business involving one or more affiliated 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 unities of ownership, operation, and use. North Dakota is one of 23 states that have adopted the Uniform Division of Income Tax Act, which provides for apportionment of corporate income and contains detailed provisions relating to property, payroll, and sales factor computations.

A corporation required to file its North Dakota return using the combined reporting method but having income from operations outside the United States 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 tax years. If the election was made for taxable years before 2004, the corporation was required to give up the deduction for federal income taxes paid. If the election is made for taxable years after 2003, the corporation is subject to an additional tax of 3.5 percent of taxable income. A corporation electing to use the water's edge method must file with the Tax Commissioner a domestic disclosure spreadsheet to fully disclose income reported to each state, state tax liability, the method used to apportion or allocate income among states, other information required to determine the proper tax due to each state, and the identity of members of the water's edge group.

2003 Legislation

House Bill No. 1309 created a corporate income tax credit of 10 percent per year for five years for direct costs of equipment to retrofit an existing facility or to adapt a new facility to produce or to blend diesel fuel containing at least 2 percent biodiesel fuel by volume.

Senate Bill No. 2294 would have allowed a small business tax credit for amounts paid to the United States Small Business Administration as an annual guarantee fee to obtain Small Business Administration guaranteed financing. The bill failed to pass.

Senate Bill No. 2054 would have established a flat-rate corporate income tax of 6.84 percent and eliminated the federal income tax deduction. A higher rate of 9.9 percent would have applied for corporations filing under the water's edge method. The bill failed to pass.

Senate Bill No. 2374 would have reduced corporate income tax rates in all brackets, with a high rate of 7.2 percent. The bill would have eliminated the federal income tax deduction for corporations. The bill failed to pass.

Senate Bill No. 2314 would have eliminated personal and corporate income taxes and broadened the state's sales tax to offset the revenue effects. The bill was amended before being passed by the Senate to leave individual income taxes unchanged and to phase out corporate income taxes over a five-year period and offset a portion of revenue losses by a sales, use, and motor vehicle excise tax rate increase of one-fourth of 1 percentage point. The bill failed to pass in the House.

Corporate Income Tax Collections

Corporate income tax collections have declined in recent years. The following table shows recent corporate income tax net collections:

Fiscal Year	Net Collections
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
2002	$41,374,297
2003 estimated	$42,861,000

Committee Consideration - Individual Income Tax Issues

The Tax Department estimates the combined impact of the federal Jobs Growth Tax Relief Reconciliation Act of 2003 on all state revenue sources is an expected reduction of $13.8 million in state general fund revenues for the 2003-05 biennium. It is anticipated that the federal Act will provide some stimulus to the North Dakota economy but the revenue estimate does not include consideration of any economic stimulus. The federal Act allocates federal funds to states to offset state income tax losses. It is anticipated that North Dakota will receive approximately $69 million in federal funds intended to offset state income tax revenue losses.

For calendar year 2002 individual income tax returns, 20.8 percent of filers had a net tax liability of zero and another 15.5 percent of filers had net tax liability of less than $100.

For Form ND-1, the most commonly used deductions for taxpayers in 2002 were the 30 percent long-term capital gain deduction, which provided a tax reduction of $5.8 million, and the deduction for interest on United States obligations, which provided a tax reduction of $1.6 million. These two deductions accounted for almost 80 percent of tax reductions from deductions on Form ND-1. For Form ND-2, the most significant deductions were for federal income taxes, state and local income taxes, medical expenses not allowed on the federal return, and interest on United States obligations.

The combined amount of income tax credits for Form ND-1 and Form ND-2 were less than $750,000 for taxable year 2002. The most significant credits were the renaissance zone credit, with a revenue cost of $255,858; long-term care insurance credit, with a revenue cost of $123,874; credit for unused federal credit for prior year minimum tax, with a revenue cost of $121,081; agricultural commodity processing facility investment credit, with a revenue cost of $107,608; and the seed capital investment credit, with a revenue cost of $98,448.

For taxable year 2002, only 2.3 percent of income tax returns were filed on Form ND-2. The committee discussed the possibility of eliminating Form ND-2 and attempted to gain an understanding of the rare instances in which a taxpayer benefits from filing Form ND-2. Lower-income taxpayers are more likely to benefit from filing Form ND-2. Others who might benefit from filing Form ND-2 include individuals with substantial amounts of medical expenses not allowed as deductions on the federal return; interest earnings on United States obligations; interest from North Dakota financial institutions; or retirement pay from military, civil service, firefighter, police, or Highway Patrol officer sources. The difference in tax savings by filing Form ND-2 rather than Form ND-1 is generally small. In a sample of returns examined by the Tax Department, the savings from using Form ND-1 ranged from less than $1 to $157. The Tax Department estimated that 64 percent of North Dakota income tax returns are prepared by professional tax preparers. Committee members pointed out that the cost of tax preparer preparation of Form ND-2 would likely exceed the savings from filing that form.

Eliminating the use of Form ND-2 would not result in a significant amount of savings for the Tax Department. There would be little change needed to Form ND-1 to make it more advantageous for the filers currently using Form ND-2, but the fiscal effect would be substantial because the changes would also benefit the 98 percent of filers already using Form ND-1. It appears the primary beneficiaries of the continued existence of Form ND-2 are low-income and older taxpayers. The committee makes no recommendation regarding the elimination of Form ND-2.

Tax Amnesty Program

Under Senate Bill No. 2015 (2003), the Tax Commissioner conducted a tax amnesty program for four months ending January 31, 2004. The program resulted in collection of $6.9 million of overdue or underreported tax liability. The majority of the taxpayers participating in the amnesty program were individual income tax filers. Corporate income tax filers represented approximately 8 percent of taxpayers under the program. Interest on delinquent taxes is 12 percent by law and participants in the amnesty program received a reduced rate of 3 percent on delinquent taxes. The Tax Commissioner said the tax amnesty program was successful, but he would recommend that North Dakota not allow another amnesty program for 15 to 20 years because some states allow frequent amnesty programs, and that alters behavior of taxpayers who come to expect an amnesty program.

Interest on Out-of-State Municipal Bonds

Interest earnings from state and local obligations are exempt from taxation at the federal level. In North Dakota interest earnings from out-of-state bonds are added back and taxed on Form ND-2 but there is no add-back for out-of-state bonds and obligations on Form ND-1, which is the primary filing method for most North Dakotans. Most states that impose income taxes do not grant favorable tax treatment except for earnings from bonds issued within their state. It was estimated that a bill draft to require add-back of out-of-state bond earnings would increase general fund revenue by approximately $1.5 million per biennium. The committee was concerned about the fairness of imposing taxes on income from bonds that have already been purchased with the expectation that income would not be taxed. To apply income taxes to out-of-state bond earnings for bonds purchased after 2005 would be approximately revenue neutral to the state.

Military Pay as Taxable Income

The Servicemembers Civil Relief Act of 2003 prohibits a state from using active duty military pay of a nonresident servicemember to calculate income taxes on income that is taxable by the state. The most likely circumstance that would be impacted by this in North Dakota relates to income earned in the state by a nonresident civilian spouse of a nonresident servicemember stationed in North Dakota. To comply with the 2003 federal legislation, an adjustment must be made on Form ND-1 to exclude consideration of the servicemember's military income in determining the couple's tax obligation. The Tax Commissioner has made this adjustment by administrative action for taxable year 2003 and later. However, the Tax Commissioner believes that legislation is needed to recognize retroactive application for taxable years before 2003.

Income Tax Elimination and Sales Tax Expansion

The committee considered a bill draft similar to Senate Bill No. 2314 (2003) to eliminate personal and corporate income taxes and broaden the state sales tax to offset the revenue effects. The bill draft was intended to mirror the South Dakota sales tax structure. The sales tax rate in the bill draft would be increased to 5.65 percent, including the tax rate for farm machinery and irrigation equipment. The most substantial broadening of sales taxes under the bill draft would be in applying sales taxes to services and to retail sales of food. These changes were suggested to enhance the business climate but it was noted they would make the tax structure more regressive and increase the possibility of severe negative impact on state revenues during an economic downturn. The committee makes no recommendation with respect to eliminating income taxes and broadening the sales tax base.

Committee Consideration - Corporate Income Tax

Revenue Decreases

The committee examined reasons for the nationwide decline in corporate income tax revenues. One factor is slowing of the national economy in recent years. North Dakota corporate income tax collections are reduced because of recent federal corporate income tax reductions, including allowing accelerated depreciation and enhanced opportunities to carry back net operating losses. Corporations choose filing methods that will reduce overall tax liability, including electing to file under the water's edge filing method. In North Dakota the number of corporations choosing the water's edge filing election has increased from 30 to 276 in 13 years. In North Dakota numerous corporations have become eligible for taxation as a financial institution. Financial institution taxes are substantially equivalent in terms of tax liability but five-sevenths of financial institutions' taxes are distributed to counties, so there is a fiscal impact to the state general fund. A growing drain on corporate income tax revenues is the fact that businesses may organize in other business forms such as limited liability companies or partnerships, which allows an entity to avoid corporate income taxes. Another factor receiving nationwide scrutiny is the effect of corporate income tax shelters.

The Tax Department conducts audits on approximately 5 to 6 percent of corporate income tax returns. The focus of audit activity is generally on more complex returns of corporations doing business across state and national boundaries.

The committee examined detailed information on the effect of passthrough entities on corporate income tax revenues. Examples of passthrough entities include subchapter S corporations, partnerships, limited liability companies, limited liability partnerships, and master limited partnerships. The income or loss of these entities is passed through directly to owners of the entities and is not subject to corporate income taxes. There is a tax incentive to avoid corporate income taxes by choosing to do business as a passthrough entity rather than as a corporation. Over the past 10 years, passthrough entity filings in North Dakota have steadily increased while corporate filings have declined.

The Multistate Tax Commission has a working group considering issues relating to passthrough entities. The working group recommended legislation to states to require a passthrough entity to either file a composite income tax return or withhold income tax on the share of income of the entity distributed to each nonresident member. Nonresident members are subject to North Dakota income taxes on passthrough entity income earned in North Dakota, but there is a compliance problem under current law to identify nonresident members and collect taxes due.

Multistate Tax Commission

The executive director of the Multistate Tax Commission addressed the committee regarding corporate income tax issues. It was stated that the creation and continued existence of state corporate income taxes is due to weaknesses of other tax types in addressing the corporate business form. A tax on income was viewed as fairer than other tax types because it taxes knowledge, patents, and other intangibles. It would be impractical to tax corporate earnings at the shareholder level because shareholders may reside in other states or countries or may be other corporations. The rationale for taxing corporate business activity is that states provide services to benefit businesses. The corporate income tax serves as a necessary companion to individual income taxes so income transfers to corporations cannot be used to avoid individual income taxes. Corporate income taxes are better suited than other tax types to fairly tax the new economy.

There are areas in which corporate income taxes are subject to criticism. The corporate income tax is a tax on production instead of consumption. The corporate income tax favors debt financing over equity and distorts business investment choices. Too many individuals and corporations are able to avoid corporate income taxes. The corporate income tax may be viewed as a double layer of taxation because income taxed at the corporate level is again subject to taxation at the individual level after distribution to shareholders.

It is important for states to observe principles to promote equity and make corporate income taxes work in practice. Income must be fully and fairly reported in reasonable relation to where that income is earned. The means of determining where multistate entity income is earned should be consistent among states.

States must recognize corporate income tax realities. Corporate income taxes have declined as a percentage of revenues for all states from approximately 9.7 percent in 1980 to 4.9 percent in 2002. Effective corporate income tax rates have declined from approximately 8.96 percent in the 1980s to 5.92 percent in 2001. A variety of factors have contributed to the decline in state corporate income tax revenues as a share of state tax collections. Changes in federal corporate income tax laws affect states due to the piggyback nature of state corporate income taxes on the federal corporate income tax structure. Federal preemption of state authority to tax some activities has caused some companies to restructure to take advantage of federal law protection. There has clearly been an increase in aggressive tax planning by corporations aimed at reducing state corporate income taxes. State policy choices on business incentives and economic development have reduced corporate income taxes for qualifying corporations. There has been a substantial shift to forms other than corporations for doing business, such as limited liability companies and similar business structures, including the creation of layers of corporate and noncorporate entities to reduce or avoid the impact of corporate income taxes.

The Multistate Tax Commission conducted a tax shelter study as an attempt to measure the degree to which income reporting for corporations does not reflect the place income was earned. One of the conclusions of the study was an estimate that states lost $8 billion to $12 billion in 2001 due to two or three categories of tax shelters. This represents a loss of approximately one-third of total state corporate income tax collections. It appears the primary method of sheltering corporate income is shifting income to a nontaxable location or tax haven or using other methods to avoid federal corporate income taxes.

It was recommended that combined reporting, including requiring information on tax haven activities, would improve corporate income tax administration. Montana enacted a 2003 law requiring that a water's edge report must include information on tax havens. It was recommended that states develop nexus rules on doing business which are consistent with how corporate income is apportioned. Uniformity among states would reduce incentives to shift income. A concerted effort should be made to curb tax sheltering and income shifting at the state and federal levels.

The Multistate Tax Commission working group also investigated the use of passthrough entities to avoid corporate income taxes. Traditional corporate forms of doing business which are subject to corporate income taxes are rapidly declining as a percentage of business organizations and as a percentage of business income. It has become clear that states need to take action to address growing use of passthrough entities. States need effective and simplified systems of ensuring proper reporting of passthrough entity income, which requires composite return and withholding requirements. It is necessary for state tax systems to address tax sheltering that employs layers of passthrough entities or single-member limited liability companies within corporations.

Business Climate Study

The committee reviewed a report prepared by a consultant for the Department of Commerce regarding the North Dakota business climate. The studies were conducted by comparing a 10-year tax analysis for Bismarck, North Dakota, with a similar analysis for 10 comparable cities in other states for location of a hypothetical manufacturing facility, an agricultural processing facility, and a technology-based business. The analysis evaluated property taxes, workers' compensation insurance, state and local sales taxes, unemployment insurance, and corporate income taxes. Tax incentives allowed in each community for businesses were included in the analysis. Of the communities compared in the studies, Bismarck was found to be the most advantageous location for a manufacturing facility or an agricultural processing facility. For technology-based business, Bismarck ranked fifth of the 11 communities compared.

A Department of Commerce representative informed the committee that the 2003 North Dakota corporate income tax rate reductions enhanced marketing for

economic development because the tax rates reflect more favorably on the business climate in North Dakota.

The committee considered a bill draft, described under the individual income tax portion of this report, which would have eliminated personal and corporate income taxes and broadened the state sales tax to offset the revenue effects. The committee also considered a bill draft that would have eliminated the corporate income tax by reducing the tax rates by 10 percent per year for 10 years, at which point the tax would be repealed. The estimated fiscal impact of the bill draft to phase out the corporate income tax would be a loss of $1.3 million in general fund revenue for the 2003-05 biennium, a loss of $14.9 million in state general fund revenue in the 2005-07 biennium, and a loss of $31.6 million in the 2007-09 biennium. The committee makes no recommendation regarding the elimination of the corporate income tax.

Recommendations

The committee recommends House Bill No. 1040 to require adding back out-of-state bonds' interest earnings to individual taxable income on Form ND-1. The bill applies only to bonds purchased after December 31, 2005. It is anticipated that the bill will have little fiscal impact to the state general fund for the 2005-07 biennium.

The committee recommends House Bill No. 1041 to allow a claim of an individual income tax refund for taxable years 2001 and 2002 for a nonresident whose military income was used to determine the initial tax on North Dakota taxable income. The bill allows the refund claim to be filed until April 15, 2006. The estimated fiscal effect of the bill is a one-time loss of approximately $88,000 in general fund revenue.

The committee recommends Senate Bill No. 2045 to require passthrough entities, such as S corporations, partnerships, trusts, limited liability companies, and limited liability partnerships, to choose between the options of filing a combined report in North Dakota or withholding North Dakota income taxes on distributions to nonresident members of the passthrough entity. The estimated fiscal impact of the bill is an increase in general fund revenue of approximately $500,000 per biennium.

The committee recommends Senate Bill No. 2046 to require inclusion of corporations in a unitary relationship and incorporated in a tax haven as part of a water's edge corporate income tax filing election. The bill is patterned after 2003 Montana legislation and would allow the Tax Commissioner to require a taxpayer to include in a domestic disclosure spreadsheet any corporation in a unitary relationship with the taxpayer and incorporated in a tax haven. The bill also provides that income shifted to a tax haven, to the extent that it is taxable, is considered income subject to apportionment for income tax purposes. The estimated fiscal impact of the bill is an increase in general fund revenue of approximately $150,000 per biennium.

STREAMLINED SALES TAX STUDY

Background

When a North Dakota resident makes a retail purchase from an out-of-state retailer by means of mail, telephone, or Internet and the purchased product is shipped to the purchaser in North Dakota, the purchaser has a tax obligation to North Dakota but the retailer has no obligation to collect North Dakota sales taxes on the purchase unless the retailer has nexus in the state of North Dakota. This situation results from interpretation of the commerce clause of the United States Constitution in a series of decisions of the United States Supreme Court, including the decision in *Quill v. North Dakota*.

In *Quill* the United States Supreme Court concluded that the commerce clause of the United States Constitution does not absolutely ban sales tax collection by out-of-state retailers but that states lack authority to require sales tax collection by remote retailers unless the United States Congress acts to give states that authority.

The sales tax is the primary state tax revenue source for most states. A growing portion of retail sales in the United States are escaping state sales taxes because mail order and Internet sales constitute a growing part of the retail economy. In addition, it is perceived as unfair competition to "main street" businesses, which must collect sales taxes and are placed at a competitive disadvantage against out-of-state retailers, who are not required to add sales taxes to the purchase price of products.

In the wake of the *Quill* decision, the National Governors Association, National Conference of State Legislatures, Multistate Tax Commission, and other groups urged a cooperative effort among sales tax states to promote nationwide uniformity in sales taxes. The most viable argument of Internet and mail order retailers against being required to collect sales taxes is that sales tax laws among states are impossible for retailers to deal with because of an incredible variety of differing provisions regarding sales tax exemptions, rates, caps, thresholds, and city and county sales taxes that differ from taxes imposed by states. To overcome these objections and gain authority from Congress to tax out-of-state retailers, states recognized that it was necessary to make their sales tax systems more uniform or "streamlined."

The Streamlined Sales Tax Project was initiated in March 2000 with meetings involving participation of 26 states, including North Dakota. By November 2002 the project had recommended a Streamlined Sales and Use Tax Agreement that participating states hoped could be implemented by 2006 to create uniform sales tax systems among states, with compatible sales tax exemptions and a limited number of sales tax rates to simplify sales tax collection by remote retailers. Participating states are hopeful that streamlining state tax systems will give states the leverage they need to convince Congress to authorize states to collect sales taxes from remote sellers. The Streamlined Sales Tax Project has received support from several large retailers

engaged in mail order and Internet sales. A significant number of retailers have voluntarily agreed to register with states that have implemented the Streamlined Sales and Use Tax Agreement and to collect sales taxes on behalf of those states. For states, the stakes for success of the goals of the Streamlined Sales Tax Project are enormous. It is estimated that about $27 million per year in additional sales tax collections would result for North Dakota if purchases from out-of-state retailers were subject to North Dakota sales taxes.

The November 2002 Streamlined Sales and Use Tax Agreement was the basis for enactment in North Dakota of Senate Bill No. 2095 (2003) and Senate Bill No. 2096 (2003). The North Dakota complying legislation becomes effective January 1, 2006, as required by the agreement.

To date, 21 states have enacted legislation to comply with the Streamlined Sales and Use Tax Agreement. Almost an equal number of states are considering legislation to comply with the agreement. Upon adoption by states representing a sufficient percentage of United States population, a governing board of participating states will be established and North Dakota hopes to be one of the states represented on the governing board.

Committee Consideration

Tax Department staff pointed out several areas in which North Dakota law must be adjusted to be in compliance with the Streamlined Sales and Use Tax Agreement by the 2006 implementation date. The additional 1 percent lodging tax created in 2003 for Lewis and Clark Bicentennial funding is perceived as a provision not in compliance with the Streamlined Sales and Use Tax Agreement. It was suggested that converting the tax to a gross receipts tax would resolve the noncompliance problem.

It was pointed out that city and county home rule sales tax provisions are not in compliance with the Streamlined Sales and Use Tax Agreement to the extent that city and county sales taxes are generally limited to a maximum of $25 on a purchase. The North Dakota League of Cities supports the effort to streamline sales taxes but has concerns with placing cities in the position of having to go through the difficulty and expense of going to the voters to change provisions of local sales tax laws. It was suggested that a state legislative solution would be welcomed to bring home rule sales tax provisions into compliance with the Streamlined Sales and Use Tax Agreement. Some of these changes can be accomplished by changing nomenclature for taxes on farm machinery and alcoholic beverages from sales taxes to gross receipts taxes. Probably the most significant change relates to the maximum sales tax for a single purchase. Representatives of the Tax Department and League of Cities agreed that compliance with the Streamlined Sales and Use Tax Agreement could be achieved by requiring retailers to collect the full amount of sales tax on a purchase and to allow the purchaser to claim a refund from the Tax Commissioner for the difference between the amount paid and the amount that would have been due with the city or county cap in place. Tax Department representatives said no additional administrative cost is expected for the Tax Department to provide refunds in these situations.

Tax Department representatives identified for the committee additional areas for technical changes in sales and use tax provisions to bring the state into compliance with the Streamlined Sales and Use Tax Agreement. Representatives of the states participating in the Streamlined Sales and Use Tax Agreement reviewed the suggested North Dakota changes and concluded that these changes would bring North Dakota into full compliance with the Streamlined Sales and Use Tax Agreement if they become effective January 1, 2006.

Recommendations

The committee recommends House Bill No. 1042 to provide for North Dakota membership on the streamlined sales tax governing board. The Legislative Council chairman would appoint two members of the House of Representatives and two members of the Senate. The Tax Commissioner would designate a Tax Department staff person to accompany and advise the North Dakota members.

The committee recommends House Bill No. 1043 to bring North Dakota into compliance with the Streamlined Sales and Use Tax Agreement. The bill inserts appropriate statutory references to farm machinery and alcoholic beverage gross receipts taxes to allow those taxes to continue to be collected by cities and counties at the same rate as they are currently collected under the sales tax. The bill provides that any city or county home rule taxes on farm machinery, farm irrigation equipment, farm machinery repair parts, or alcoholic beverages become gross receipts taxes on January 1, 2006. The bill provides that a cap provided by city or county home rule for sales taxes on purchase of a single item will be replaced effective January 1, 2006, with a refund provision requiring the retailer to collect the full amount of city or county sales taxes and allowing the purchaser to claim a refund of the difference between the full amount paid and the amount that would have been paid if the cap were in place. These changes are made for all home rule cities and counties to avoid forcing cities and counties to each conduct an election for approval of these changes. The bill provides changes in sales and use tax definitions. The bill creates a section to provide that sales taxes will continue to apply to cigarettes, cigars, and other tobacco products, which was inadvertently eliminated by the 2003 legislation. The bill creates use tax imposition provisions for the farm machinery gross receipts tax and alcoholic beverage gross receipts tax which were created in 2003 but did not include use tax provisions. The bill changes the 1 percent lodging tax for Lewis and Clark Bicentennial funding into a gross receipts tax to satisfy the requirements of the Streamlined Sales and Use Tax Agreement. The revenue from the tax will still be used for the same purposes as were provided in the legislation that established the tax. The

bill would become effective January 1, 2006, as required by the Streamlined Sales and Use Tax Agreement. The Tax Department estimates no fiscal effect from enactment of the bill.

TAX PREFERENCES STUDY

Background

Any tax exemption, deduction, credit, rate reduction, or other distinction allowing some taxpayers to pay less than would normally be paid under any tax type would be included within the study of tax preferences. Each tax governed by state law contains tax preferences and many contain numerous types of tax preferences. The committee focused its attention on sales, income, and property tax preferences.

Committee Consideration

The committee reviewed the year of enactment, coverage, and fiscal effect of each exemption allowed under sales and use taxes. The committee reviewed detailed information on services that are taxable or exempt under the North Dakota sales tax, including a comparison taxation of specific services in North Dakota and nine comparable states. Taxation of services was a significant part of the debate during consideration of 2003 legislation to broaden the sales tax and during consideration of a similar bill draft by the committee. It is estimated if all services now exempt from sales taxes were subjected to sales taxes, North Dakota general fund revenue would be increased by approximately $160 million. Elimination of all sales tax exemptions was estimated to increase state general fund revenues by approximately $470 million for a biennium. It was estimated that if all sales tax exemptions were eliminated, the sales tax rate could be reduced from 5 to 2.8 percent and it would generate the same revenue. However, removing sales tax exemptions for food, prescription drugs, health care supplies, medical services, and similar purchases would substantially increase the regressive nature of the sales tax and the greatest impact of the change would be felt by low-income persons and senior citizens.

The committee reviewed each income tax preference as described in the income tax study portion of this report.

Agricultural Property Assessment

Agricultural property receives preferential assessment for property tax purposes because it is valued under a productivity formula rather than being valued on the basis of market value. From 1993 through 2002, the percentage of total property taxes among all property owners in the state which has been paid by agricultural property owners has decreased by about four percentage points, residential property taxes paid have increased by about five percentage points, and commercial property taxes paid have remained within about one percentage point of the 1993 level. In 2003 legislative changes to the agricultural property valuation formula further decreased agricultural property valuations. Based on certain assumptions, the 2003 legislation is estimated to result in a shift of $879,000 in property taxes from agricultural property to residential and commercial property.

The committee gathered detailed information on agricultural property valuation under the valuation formula. The most significant change in 2003 legislation established a minimum capitalization rate for the productivity valuation formula of 9.5 percent. The capitalization rate that had been used in the formula for 2002 was 8.91 percent. The increase in the capitalization rate from 2002 to 2003 accounted for an average decrease in agricultural land values statewide of 6.2 percent. The increase in the cost of production index resulted in an additional 2.43 percent decrease. The two decrease factors were partially offset by increased productivity, resulting in an overall statewide agricultural property valuation decrease of 5.4 percent from 2002 to 2003. It is estimated that it will take at least five years for the capitalization rate to climb above the minimum value of 9.5 percent. Until that happens, it is expected that cropland values will remain steady to down 1 percent per year, noncropland values will decline 2 to 2.5 percent per year, and total agricultural land valuation will decline one-half of 1 percent to 1 percent per year. If interest rates rise to the point that the capitalization rate moves above the 9.5 percent minimum set by statute, the decline in agricultural land values will accelerate.

Farm Buildings Property Tax Exemption

Background

Before 1918 the Constitution of North Dakota did not allow exemption from property taxes for buildings. In November 1918 the voters approved an amendment to what is now Article X, Section 5, of the Constitution of North Dakota, which allowed the Legislative Assembly to classify buildings as personal property and thereby exempt selected buildings from property taxes.

The first property tax exemption for agricultural buildings in North Dakota was enacted by passage of Senate Bill No. 44 (1919). That bill simply provided exemption from property taxes for "all structures and improvements on agricultural lands." The bill contained no definition of the terms "structures and improvements" or "agricultural lands."

For a period of 50 years, the farm building exemption was changed very little, although a presumption was added that any parcel of property of less than five acres was not a farm. It appears that application of the exemption became more difficult as "nonfarmers" began moving to rural areas, and the 1971 Legislative Council report recommended a bill to increase the minimum qualifying size of a farm from 5 to 10 acres and to require that not less than 50 percent of total annual gross income of the farmer and the farmer's spouse must be derived from the farm. The report states that a problem existed in some areas when persons who were not farmers built houses in rural areas and claimed the houses were exempt under the farm structure exemption. The 42nd Legislative Assembly (1971)

approved the bill recommended by the Legislative Council but deleted the requirement of 50 percent of the farmer's income coming from the farm.

In 1973 the Legislative Assembly restricted the application of the farm building exemption. This 1973 legislation introduced several new concepts, such as application of income limitations, activities limitations, and retirement considerations. The bill included a statement of intent of the Legislative Assembly that the exemption as applied to a residence was to be strictly construed and interpreted to exempt only a residence situated on a farm occupied or used by a person who is a farmer. The bill defined "farm" as agricultural land containing a minimum of 10 acres which normally provides a farmer, who is actually farming the land or engaged in the raising of livestock or other similar operations normally associated with farming and ranching, with not less than 50 percent of the individual's annual net income, and the bill defined "farmer" to mean an individual who normally devotes the major portion of the person's time to the activities of producing products of the soil, poultry, livestock, or dairy farming and who normally receives not less than 50 percent of the person's annual net income from these activities. The bill also defined "farmer" to include an individual who is retired because of illness or age and who at the time of retirement owned and occupied as a farmer the residence in which the person lives and for which the exemption is claimed.

In 1981 the farm building exemption was further restricted by defining income from farming activities, requiring that a husband and wife who reside in a residence claimed as exempt must receive not less than 50 percent of combined net income from farming activities and allowing the assessor to require the occupant of a residence who is claiming the agricultural building exemption to file a written statement regarding the income qualifications of the applicant and spouse.

In 1983 a limitation was added that the individual and spouse claiming the exemption could not qualify for the exemption if the individual and spouse had more than $20,000 of nonfarm income during each of the three preceding calendar years. This provision does not apply to an individual who is retired from farming and otherwise qualifies for the exemption. This annual nonfarm income limitation was increased from $20,000 to $30,000 per year for three preceding calendar years in 1985.

During the November 1991 special legislative session, a further limitation was added that any structure or improvement located on platted land within the corporate limits of a city or any structure or improvement located on railroad operating property is not exempt as a farm structure.

In 1995 the definition of livestock as used in the exemption was expanded to include nontraditional livestock.

In 1997 the requirement that a farm must normally provide the farmer with 50 percent or more of annual net income was replaced with a provision that disqualifies the farmer from the farm residence exemption if the farmer receives more than 50 percent of annual net income from nonfarm income during each of the three preceding calendar years. The limitation on nonfarm income was increased from $30,000 to $40,000 during each of the three preceding calendar years, which would disqualify a farmer from the farm residence exemption and an exclusion was added that a farmer operating a bed and breakfast facility would not be disqualified from the farm residence exemption because of income from operation of the bed and breakfast facility.

In 1999 the disqualification for earning 50 percent or more of annual net income from nonfarm income in each of the three preceding calendar years was replaced with a requirement that annual net income from farming activities must be 50 percent or more of annual net income during any of the three preceding calendar years. The 1999 changes also allowed a beginning farmer to qualify for the exemption by excluding consideration of that person's income history. In 1999 the farm building exemption was expanded to include feedlots and buildings used primarily, rather than exclusively, for farming purposes. In 1999 a provision was added to allow addition of depreciation expenses from farming activities to net farm income for purposes of qualifying for the farm residence exemption.

Committee Consideration

The committee received testimony from several county directors of tax equalization describing problems with the farm buildings property tax exemption. All of these tax officials described this exemption as the most difficult aspect of property tax administration in North Dakota.

A recent development that has raised questions regarding the farm residence exemption is corporate farm ownership, which has been addressed by two opinions of the Attorney General in 2004. The opinions concluded that a farm residence occupied by an individual receiving wages from a corporation would not qualify for the farm residence exemption but would be eligible for exemption as a farm building located on agricultural lands and used to provide housing for an employee. Because the income limitations for the farm residence exemption only apply to a residence, corporate ownership and classification of the residence as a farm building that is exempt means that the structure is exempt from property taxes regardless of the source of income or amount of income of the individual residing on the farm. As an example of the potential unfairness of this situation, a struggling farmer and spouse who earn slightly more nonfarm income than farm income per year are subject to property taxes on their farm residence while an incorporated farmer earning more than $100,000 annual nonfarm income and residing in a $300,000 residence on a farm owned by a corporation pays no property taxes on that home.

The income limitations in the farm residence exemption often have the most impact on struggling farmers. If farm income is low, any nonfarm income earned to keep the farm afloat could disqualify the owners from the

exemption. The farmer whose residence is put on the tax rolls sees this as a double penalty because the farmer must take an outside job to keep the farm going and then is subjected to property taxes on the farmhouse because of the outside income.

The statutory provision allows assessors to require annual application for the farm residence exemption. In some counties applications are required every year in an attempt to be fair to all farmers. In some counties the county has suggested that applications should be required but in several townships the assessors refuse to require applications.

An example was given of a farmer whose spouse earned nonfarm income exceeding the limitations in the statute. The residence was subject to property taxes. The couple was divorced and the residence became exempt because there was no nonfarm income for one year. The farmer remarried and the new spouse also has more than $40,000 of nonfarm income but the residence in question remains exempt for three years because for one year there was no nonfarm income.

In several counties, problems were described with township application of the farm residence exemption. In some instances, it was alleged that residences that should be subjected to property taxes are exempt because of favoritism by the local assessor or the township board of supervisors. Instances were described in which a township assessor was fired for attempting to apply the law correctly but in opposition to the wishes of the board of township supervisors.

Eliminating the farm residence exemption has been suggested by some farmers who perceive unfairness in the current situation in which some residences are exempt and some are taxed. It was suggested that taxing all residences might result in lower overall taxes for some farmers when their neighbors' very expensive homes would be put on the tax rolls. County assessment officials pointed out the problem that it would take several years to assess all farm residences because existing assessment staff does not have extra time to complete these assessments.

It was suggested that using state-level assessors for farm residence assessments and application of exemptions would improve the uniformity of the system and address the problem that it is apparently becoming more difficult for counties and townships to get people to take the job of assessing farm property.

In discussion of problems with applying the farm residence exemption, no consensus of how to improve the existing situation could be achieved. The committee urged interested parties to continue discussion of these issues and seek a consensus recommendation for 2005 legislation that will improve the fairness and provide uniform application of the exemption.

Conclusion

The committee makes no recommendation regarding its tax preferences study.

TRANSPORTATION COMMITTEE

The Transportation Committee was assigned four studies. Section 1 of Senate Bill No. 2262 directed a study of the motor vehicle no-fault, underinsured motorist, and uninsured motorist insurance systems. Section 5 of Senate Bill No. 2358 directed a study of the sale and lease of railroad rights of way. Senate Concurrent Resolution No. 4011 directed the study of alternative methods for recording and discharging a lien on a motor vehicle. Senate Concurrent Resolution No. 4030 directed a study of the requirements for the registration and licensing of snowmobile and all-terrain vehicle dealers. This study was expanded by directive of the Legislative Council chairman to include the requirements for licensing motorcycle and low-speed vehicle dealers.

Committee members were Senators David P. O'Connell (Chairman), Duane Mutch, Dave Nething, and Tom Seymour and Representatives Craig Headland, Joyce Kingsbury, William E. Kretschmar, Dan J. Ruby, Dorvan Solberg, Elwood Thorpe, Robin Weisz, and Ray H. Wikenheiser.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2004. The Council accepted the report for submission to the 59th Legislative Assembly.

MOTOR VEHICLE INSURANCE STUDY

Senate Bill No. 2262 was introduced to exclude motorcycles from uninsured and underinsured motorist coverage unless the claim is made on a motorcycle that is described in the policy. An insured with an underinsured or uninsured motorist policy may recover if the insured suffers bodily injury or death caused by an uninsured or underinsured motorcycle. This may occur when a child covered under a parent's uninsured or underinsured motor vehicle policy is injured while riding a friend's uninsured or underinsured motorcycle. The result may be an insurer paying for bodily injury claims incurred on a motorcycle when the insurance company does not insure motorcycles.

Liability Insurance

Under North Dakota Century Code (NDCC) Section 39-08-20, a person may not drive a motor vehicle in this state without liability insurance in the amount required by Chapter 39-16.1. The owner of a vehicle is responsible for acquiring liability insurance. In addition, a driver must provide proof of insurance upon request by a law enforcement officer.

North Dakota Century Code Chapter 39-16.1, "Proof of Financial Responsibility for the Future," works in concert with Chapter 39-16, "Financial Responsibility of Owners and Operators." The purpose of these two chapters is to protect innocent victims of motor vehicle accidents from financial disaster. Both chapters are for a motor vehicle owner who has already had an accident or has been convicted of certain traffic offenses. The sanctions imposed by Chapter 39-16 are intended to guarantee financial responsibility for a first accident. In contrast, the sanctions imposed by Chapter 39-16.1 are designed to establish proof of financial responsibility for future accidents. The minimum limits for liability insurance in Section 39-16.1-11 are $25,000 per person and $50,000 per accident for bodily injury and $25,000 per accident for property damage.

Uninsured and Underinsured Motorist Insurance

The main provisions of law relating to uninsured and underinsured are contained in seven sections codified as NDCC Sections 26.1-40-15.1 through 26.1-40-15.7. These sections were enacted in 1989 in response to the Legislative Assembly making underinsured motorist coverage mandatory in 1987. There has been one substantive change to the law since 1989 and that change was relatively minor.

In general, uninsured motorist coverage is for bodily injury protection for the insured if the other party causing the injury does not have liability insurance. Underinsured motorist coverage is bodily injury protection for the insured if the other party causing the injury had liability coverage less than the amount of the insured person's underinsured motorist coverage.

Uninsured and underinsured motorist coverages are mandatory. Under NDCC Section 26.1-40-15.2, a liability insurance policy may not be issued unless uninsured motorist coverage is provided in the amount of $25,000 per person per accident subject to a limit of $50,000 per accident. The insurer can limit uninsured coverage to $100,000 per person and $300,000 per accident and to usual combinations of limits normally used in the insurance business. Section 26.1-40-15.3 requires underinsured motorist coverage at the limits equal to the limits of uninsured motorist coverage.

Uninsured and underinsured motorist coverages are separate coverages. However, the concepts are closely related.

The first step for an insured to be covered under an uninsured motorist policy is if the insured suffers bodily injury or death caused by an uninsured vehicle. An uninsured motor vehicle is a vehicle that does not have liability insurance or is a vehicle that has liability insurance that does not provide coverage. The first step for an insured to be covered under an underinsured motorist policy is if the insured suffers bodily injury or death caused by an underinsured vehicle. An underinsured vehicle is a vehicle that has liability insurance in effect, but the limits of the liability insurance are less than the limits of the underinsured policy of the injured insured or less than the liability insurance after being reduced by payments to other persons.

"Motor vehicle," in relation to uninsured motor vehicle and underinsured motor vehicle, includes a vehicle with two or more load-bearing wheels which is registered, designed primarily for highway operation, and is powered other than by muscular power and includes an attached

trailer, but does not include a vehicle weighing more than 20,000 pounds.

There are a number of situations in which a person is not covered under an uninsured or underinsured motorist policy. North Dakota Century Code Section 26.1-40-15.1(4) excludes these vehicles from the definition of uninsured motor vehicle and underinsured motor vehicle:

- A motor vehicle insured under the liability coverage of the same policy of which the uninsured motorist or underinsured motorist coverage is a part. This prevents an insured from recovering under both the liability coverage and the uninsured or underinsured motorist coverage of the same policy.
- A motor vehicle owned by the government.
- A motor vehicle located for use as a residence or premises.
- A motor vehicle operated by any person who is specifically excluded from coverage in the policy.
- With respect to uninsured motorist coverage, a self-insured motor vehicle is not an uninsured motor vehicle.

North Dakota Century Code Section 26.1-40-15.6 excludes these situations from uninsured and underinsured coverages:

- If the vehicle is regularly used by the insured or family and is not described in the policy,
- If the vehicle is operated without permission of the owner,
- For noneconomic loss that would have been covered if the owner or operator responsible for the loss had no-fault insurance,
- For noncompensatory damages,
- If the statute of limitations has expired,
- Until bodily injury liability policies have been exhausted,
- If the insured makes an agreement that adversely affects the rights of the insurer without the insurer's prior knowledge and consent,
- If the insured failed to report the accident to law enforcement as soon as practicable, or
- If a person operates a motor vehicle in which the individual is specifically excluded in the policy.

If a person has a policy, has an accident with a motor vehicle defined as uninsured or underinsured, and has not been statutorily excluded from coverage, the maximum liability under both uninsured and underinsured motorist coverages is the lower of the amount of compensatory damages established but not recovered or policy limits.

There are three approaches to addressing when underinsured motorist coverages pay benefits when there is another source of recovery:

- The excess approach,
- The difference in limits approach, and
- The modified difference in limits approach.

The excess approach has underinsured motorist benefits apply in addition to any other recovery up to the policy limits. The difference in limits approach has underinsured motorist benefits apply to the extent of the difference between the policy limits and the amount recovered.

The third approach is the modified difference in limits approach, which was used in this state before 1989. The modified difference in limits approach has underinsured motorist benefits apply in the same manner as the difference in limits approach, except an insured with policy limits less than the policy limits of the underinsured motor vehicle can recover if several individuals are injured by the underinsured motor vehicle and the accident limits were reduced or exhausted below the insured's policy limits. This state now has a difference in limits definitional trigger. If the definition is met, then coverage is on an excess basis, which is inclusive of the modified difference in limits approach.

Since 1989 a number of bills have failed to pass which relate to uninsured and underinsured motorist coverage. Most of these bills related to the approach used to determine when benefits apply when there is an equal amount of liability insurance and attempted to change this state's law to a true excess approach. The main argument against the excess approach in 1989 was that insurance companies would be subject to a potential claim for underinsured motorist coverage in every accident. Because of this potential coverage, the insurer will have to open a claim file, do an investigation, and make a determination as to the insurer's exposure for every accident. This is in contrast with the difference in limits approach, in which the insurer only has exposure for underinsured motorist coverage when liability limits are less than the underinsured motorist coverage.

Other States

At least 13 states and the District of Columbia have mandatory uninsured motorist laws. These states are Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Dakota, Rhode Island, South Carolina, South Dakota, Vermont, and Wisconsin. Of the states with mandatory uninsured motorist laws, underinsured motorist coverage is optional in Massachusetts, New Jersey, New York, South Carolina, and Wisconsin.

No-Fault Insurance

Background

The focus on no-fault insurance began in 1968. In 1968 Congress directed the United States Department of Transportation to conduct a study and to report its findings and recommendations to the President and Congress. The study concluded that the existing system ill served the accident victim, the insuring public, and society at large. Further, it was concluded that the present system was inefficient, grossly expensive, incomplete, and slow. It allocated benefits poorly and very unevenly, discouraged the use of rehabilitative techniques, and overburdened the courts and the legal system. Based upon the Department of Transportation study, the Nixon Administration recommended the states adopt a first-party, no-fault compensation system for automobile accident victims.

Generally, "no-fault automobile insurance" refers to a type of automobile insurance under which claims for personal injury are made against a claimant's own insurance company rather than against the insurer of the party at fault. An owner with no-fault insurance is considered a secured person. As a secured person, the owner may not be sued or sue for noneconomic loss (pain and suffering) unless there is serious bodily injury. In this state, serious bodily injury, among other things, includes medical expenses in excess of $2,500. In addition, the secured person may not be sued or sue for loss to the extent economic loss is paid or will be paid by the no-fault insurance. To be sued or sue for noneconomic loss, the serious bodily injury threshold must be met; as opposed to being sued for economic loss for which the only requirement to be sued or sue is that the loss is not covered by no-fault insurance.

After a Legislative Council study of no-fault insurance during the 1971-72 interim, the 1973 Legislative Assembly defeated a bill to establish a no-fault automobile insurance system. However, in 1975 the North Dakota Legislative Assembly enacted House Bill No. 1214, the North Dakota Auto Accident Reparations Act. This bill provided for a no-fault automobile insurance system. This no-fault automobile insurance law became effective on January 1, 1976, and remains in effect with amendments today. North Dakota Century Code Chapter 26.1-41 is entitled "Auto Accident Reparations," and this chapter comprises most of the state's no-fault automobile insurance law.

What and Who Is Covered

Under NDCC Section 26.1-41-01, a basic no-fault insurer is required to pay basic no-fault benefits not to exceed $30,000, without regard to fault, for economic loss resulting from accidental bodily injury. Basic no-fault benefits do not apply to damage to personal property, such as an automobile.

Basic no-fault benefits include payments for medical expenses, work loss, replacement services, and death benefits. Medical expenses are covered for necessary remedial treatment and care at reasonable charges. Work loss has a limit of 85 percent of loss of income up to a maximum of $150 per week. Survivors may receive income loss not to exceed $150 per week in case of death. Replacement services are for the actual expense of the loss of services of the injured person in the household. These payments are limited to up to $15 per day. Death benefits for funeral expenses are limited to $3,500.

Under NDCC Section 26.1-41-06, the insurer is required to pay for the economic loss that results from accidental bodily injury sustained by:

- The owner, or any relative of the owner, of a motor vehicle while occupying any motor vehicle or while a pedestrian as a result of being struck by a motor vehicle or motorcycle,
- Any other person while occupying the secured motor vehicle, or
- Any pedestrian as a result of being struck by the secured motor vehicle.

Under NDCC Section 26.1-41-07, there are certain circumstances under which an otherwise eligible injured person is not entitled to no-fault benefits, including if the injured person intentionally caused injury and if the injured person was not in lawful possession of the motor vehicle.

Which Policy Pays

Under NDCC Section 26.1-41-13, a basic no-fault insurer has the primary obligation for economic loss from bodily injury unless there is workers' compensation coverage. Under Section 26.1-41-13(3), the basic no-fault insurer pays for the first $10,000 of medical expenses and the medical insurer pays the remainder. This coordination of benefits is designed to ensure that there is not a double payment. If there are multiple no-fault policies, the occupant's vehicle coverage has priority over the injured passenger's coverage, followed by the assigned claims plan. The assigned claims plan pays no-fault benefits to an individual not otherwise excluded by law or on the financial inability of the basic no-fault insurer. Generally, an insurer does not have the right of subrogation, only arbitration against the adverse insured for limited amounts.

How Is What Is Paid Determined

Under NDCC Section 26.1-41-11, an insurer may require the insured person to have a physician of the insurer's choice examine the insured person. These examinations are called independent medical examinations by the insurer. Generally, the examinations are used to determine if the injury claimed was caused by the accident or was a preexisting or subsequent condition.

During the 2001-02 interim, the Budget Committee on Health Care received a report from the Insurance Commissioner on independent medical examinations which suggested 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.

Selected Case Law From North Dakota

In *McGarry v. Skolgey*, 275 N.W.2d 321 (N.D. 1979), the Supreme Court of North Dakota stated that "[t]he mere attempt to intelligently recite the basics of no-fault ends up as a grammatical monster." The court also stated:

> This case leads us to understand why some courts have found it necessary, when encountering difficulties with no-fault cases, to use such descriptive words as "resist reconciliation," "positive repugnancy," "irreconcilable inconsistencies," and "the legislature should revisit the subject."

In *Weber v. State Farm Mutual Automobile Insurance Company*, 284 N.W.2d 299 (N.D. 1979), Mr. Weber, the owner of a four-door pickup, was hunting with his wife and two friends. Upon spotting some deer, Mr. Gabby, who was in the rear passenger side seat, exited the vehicle while loading his rifle. As he closed the bolt of

the gun, the gun discharged. The bullet struck and killed Mr. Weber. Ms. Weber made a claim against State Farm for death benefits under no-fault coverage. State Farm denied the claim, arguing that there was no causal connection between the operation of the motor vehicle and the accident. The Supreme Court of North Dakota stated one of the purposes of the no-fault law is to avoid protracted litigation over issues of fault or causation. The court reasoned that because no-fault benefits are paid for an accidental bodily injury sustained by the owner of a motor vehicle or any relative of the owner while occupying any motor vehicle, the claim should not have been denied because Mr. Weber was occupying a motor vehicle.

In *State Farm Automobile Insurance Company v. Gabel*, 539 N.W.2d 290 (N.D. 1995), Mr. Gabel suffered a fatal aneurysm while driving his pickup and collided with a building. The Supreme Court of North Dakota denied no-fault benefits because the death was not the result of an accident and did not arise out of the use of a motor vehicle.

In *Olmstead v. Miller*, 383 N.W.2d 817 (N.D. 1986), while driving a vehicle, Mr. Miller crashed into the Olmstead's anchored trailer home. Because coverage under the no-fault insurance law extends to accidental bodily injury sustained by a person while a pedestrian as a result of being struck by a motor vehicle, the issue was raised whether no-fault insurance is applicable in these circumstances. Under NDCC Section 26-41-03(13), a pedestrian is defined as "any person not occupying any vehicle designed to be driven or drawn by power other than muscular power." The court found that although the Olmsteads were pedestrians, under the plain meaning of this section, the court did not believe the legislature intended the term to encompass all persons injured by a motor vehicle regardless of the circumstances under which the injuries occurred.

A final case is included in this review because there is a specific urging of the Legislative Assembly to address this issue. In *Calavera v. Vix*, 356 N.W.2d 901 (N.D. 1984), the Supreme Court of North Dakota held that the determination of medical expenses needed to meet the serious injury threshold is not limited by the statute of limitations of six years. Justice Gierke, concurring, urged the Legislative Assembly to examine the open-ended nature of no-fault coverage and consider placing a limit on the time within which the medical expenses must be incurred in order for the injury to be considered a serious injury. The Legislative Assembly has not addressed this issue.

From these cases, a number of lessons may be learned. First, no-fault law is complex and results in using apparently conflicting rationale to determine cases. Second, no-fault does not apply every time any injury occurs in relation to a motor vehicle. A person must be occupying a motor vehicle and the injury must arise out of the operation of a motor vehicle. An injury arising out of the operation of a motor vehicle includes when a vehicle is not moving or the accident is something other than a crash but does not include injuries by chance which happen in a motor vehicle and are not related to the operation of a motor vehicle. Finally, although the definition of pedestrian includes any person not in a motor vehicle, the definition really means something else that has not been defined, unless a person is in a home, then the person is not a pedestrian.

Legislative History

The 1975 law placed the cap for no-fault benefits at $15,000. The cap for work loss or survivors' benefits was $150 per week because that amount was the average wage per week in this state. Death benefits for funeral expenses were limited to $1,000. Replacement services were limited to $15 per day. The threshold to sue for noneconomic loss because of serious injury based on medical expenses was set at $1,000.

House Bill No. 1510 (1977) created the amount of no-fault medical expenses a no-fault insurer may coordinate with a health insurer in the amount of $5,000. Before the passage of House Bill No. 1510, if an individual had medical expenses in excess of $15,000, depending on the coordination of benefits, the first $15,000 might be paid by the no-fault insurer and the excess paid by the health care insurer. However, this did not leave any money left under the no-fault benefits for work loss, replacement services, or death benefits. The bill allowed the no-fault carrier to subrogate against the health care insurer after the first $5,000 of no-fault benefits were paid, thereby leaving more benefits for items other than medical expenses.

Senate Bill No. 2061 (1981) included health maintenance organizations to the health care insurers in the coordination of benefits provision.

House Bill No. 1195 (1983) prohibited the stacking of insurance coverage as it pertains to uninsured motorist coverage and no-fault benefits. Benefits are available only to the extent of the applicable basic no-fault benefits provided to an injured person, and benefits from one source cannot be added to the benefits from another source.

House Bill No. 1528 (1985) increased the maximum level for basic no-fault benefits from $15,000 to $30,000 and optional excess no-fault benefits for motor vehicle insurance from $40,000 to $80,000. The bill increased the threshold amount defining serious injury from $1,000 to $2,500 of medical expenses. The stated reason for the bill was that $15,000 was not large enough to cover serious accidents. In those accidents, if an individual does not have medical insurance, the individual must pay the balance above the no-fault limits.

The reason for the increase in the medical expenses threshold was to balance the increased benefit with the removal of more of the right to sue because of the increase in basic no-fault benefits to $30,000.

Senate Bill No. 2413 (1987) provided that a basic no-fault insurer may coordinate any benefits it is obligated to pay for medical expenses as a result of accidental bodily injury in excess of $5,000. The bill clarified the coordination of benefits happened after the first $5,000 in medical expenses.

House Bill No. 1467 (1989) increased the time for filing a no-fault insurance claim in an action to recover

further benefits for a loss in which the basic or optional excess no-fault benefits have been paid from two to four years after the last payment of benefits. The time for filing was increased in an action for benefits for survivors' income loss and replacement services loss and funeral expenses for one to two years after the death or from four to six years after the accident from which the death results, whichever is earlier. The time for filing was increased in an action to recover further survivors' income loss or replacement services loss benefits from two to six years after the last payment for benefits. The bill increased the time for filing if basic or optional excess no-fault benefits have been paid for loss suffered by an injured person before death and action to recover survivors' income loss or replacement services loss benefits from one to two years after death or from four to six years after the last benefits are paid, whichever is earlier.

Senate Bill No. 2089 (1991) clarified the exclusion of basic no-fault insurers from the prohibition from coordinating benefits without providing the purchaser with an equitable reduction or savings in cost. In addition, the bill allowed a basic no-fault insurer to recover all no-fault benefits, not solely basic no-fault benefits, from another no-fault insurer when tort law would require recovery.

Senate Bill No. 2555 (1991) increased the funeral expense benefit from $1,000 to $3,500. The increased benefit was expected to cost approximately 22 cents per vehicle per year.

Senate Bill No. 2376 (1999) limited the recoverable damages of a person who is in a motor vehicle accident and does not have liability insurance if that person has at least two convictions of operating a motor vehicle without liability insurance. In other words, a person with no-fault insurance may not be assessed damages for pain and suffering in favor of a person who has at least two convictions of operating a motor vehicle without liability insurance.

Senate Bill No. 2275 (2003) increased the amount of no-fault medical expenses a no-fault insurer may coordinate with a health insurer from in excess of $5,000 to $10,000. In short, the no-fault insurer pays the first $10,000 of medical expenses and the health care insurer pays medical expenses after $10,000. Generally, health insurers were for the increase because with the threshold at $5,000, medical insurance had to pay more medical expenses as inflation caused more expenses to exceed the threshold. Generally, no-fault insurers were against the increase because the increase lowered the amount of no-fault benefits available for benefits that are not medical expenses, including work loss and replacement services benefits.

House Bill No. 1190 (2003) removed the expiration date on the statute that prohibits a person who has two convictions for driving without liability insurance and was driving without liability insurance from receiving noneconomic loss for serious injury in an action against the insured. In addition, the bill lowered the previous convictions requirement from two to one.

No-Fault Insurance in Other States

Saskatchewan has had no-fault insurance since 1946 and Puerto Rico has had no-fault insurance since 1968. The first state to adopt the modified no-fault insurance system was Massachusetts in the early 1970s. In the 1970s no-fault laws were enacted in 16 states. Since that time, five of those states repealed no-fault laws--Colorado, Connecticut, Georgia, Nevada, and Pennsylvania. Although Pennsylvania repealed its law in 1984, it adopted a new law in 1990.

Theoretically there are three ways to classify no-fault insurance:

- Absolute no-fault.
- Modified no-fault.
- Choice no-fault.

Absolute no-fault is coverage in which a driver relinquishes the right to sue for pain and suffering in exchange for coverage for all economic losses. No state has this form of no-fault. The state with the closest form to absolute no-fault is Michigan. Michigan has unlimited coverage and it is very difficult to sue for noneconomic losses.

Modified no-fault is coverage in which first-party benefits are provided regardless of fault and the right to sue for pain and suffering is permitted only after meeting a statutorily defined threshold. Some states use a dollar threshold and some states use a verbal threshold. Every state with a no-fault law is a modified no-fault state. These states are Florida, Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Pennsylvania, and Utah.

Of the states that are modified no-fault states, three are choice no-fault states. Under this system, a driver may choose to be included in the modified no-fault system or the tort system. States with this form of no-fault coverage are New Jersey, Pennsylvania, and Kentucky.

"Add-on" insurance is expanded first-party coverage that has first-party, no-fault benefits for medical expenses and lost wages but does not restrict lawsuits for pain and suffering. Although this type of insurance is closely related to no-fault, it is not no-fault--the coverage is added on to the existing tort liability system. The nine add-on states are Arkansas, Delaware, Maryland, Oregon, South Carolina, South Dakota, Texas, Virginia, and Washington.

The remaining 29 states are tort liability states. An individual injured in a motor vehicle accident must collect payment from the at-fault driver, if any, and must be able to prove negligence. However, some vehicle owners purchase medical payments coverage to provide personal injury protection.

The most recent state to convert to a tort system, after being in a no-fault system, is Colorado. Colorado's no-fault insurance statutes sunsetted on July 1, 2003. During the 2003 legislative session, the General Assembly of Colorado considered a number of bills to reform the no-fault insurance system. The most viable options appeared to have died after intense lobbying efforts by trial lawyers and health care providers. The Governor also indicated he would not sign any legislation

extending no-fault unless there were significant savings attached to the legislation. These actions resulted in the application of the sunset clause and a return to the tort system.

In *A History and Overview of Colorado Law for Automobile Insurance Coverage* by Paul D. Godec, September 2003, Mr. Godec lists a number of consequences of the change from the no-fault to the tort system in Colorado. These consequences include:

- Health insurance benefits will increase because health insurance will cover more of the medical expenses following accidents.
- Medical facilities will more likely aggressively pursue liens and reimbursements for services through tort litigation. In addition, emergency facilities experiencing financial difficulties will face more difficulties because of the lower certainty of reimbursement.
- Individuals who suffer injury as a result of an at-fault driver will have to pay for medical expenses with the hope of recovering in later litigation. This may result in an injured party not obtaining certain medical services until the resolution of the litigation.
- At-fault drivers will be left to pay for their own medical expenses and the change will make it more likely an injured driver will become a defendant in a tort action.

Testimony and Discussion

Uninsured and Underinsured Motorist Coverage

The committee was informed of a situation in which a child who was away at college rode as a passenger on another person's motorcycle that was uninsured. The parents of the child did not want the child covered under their uninsured motorist coverage on their automobile.

The committee was informed the Legislative Assembly intended to include this situation within uninsured or underinsured motorist coverage because of the high probability of great injury. On the other hand, testimony indicated that it is unfair to include in the rates for automobile policies costs associated with the operation of motorcycles.

Testimony indicated that motorcycles are more likely not to be insured than other vehicles. This is because a high proportion of youth ride motorcycles and motorcycles are a seasonal vehicle for which a person may forget to reinstate insurance.

Committee discussion included that insurance companies know this situation may arise and can adjust premiums accordingly. In addition, committee discussion included that it is a different issue if a child is part of a household from whether the child should or should not be covered because the situation is unfair to an insurance company.

The committee considered a bill draft that excluded motorcycles from uninsured and underinsured motorist coverage of an automobile policy. The bill draft provided that uninsured and underinsured motorist coverages would not apply to an insured while operating or occupying a motorcycle and motorcycle coverage was not included in the policy for which the claim is made. The bill draft created parity in that an automobile policy would cover an individual in any automobile and a motorcycle policy would cover an individual on any motorcycle.

Supporters of the bill draft pointed out the bill draft was similar to Senate Bill No. 2262 (2003) as introduced, which was introduced to address increases in motor vehicle insurance premiums. It was argued that the committee should remove the language limiting a motorcycle to a vehicle having a seat or saddle.

Opponents of the bill draft argued the bill draft may financially affect health insurance companies because these companies have subrogation rights against uninsured and underinsured motorist coverage. In particular, health insurance companies will still have the right of subrogation and would still be able to go after the assets of the insured.

Although no testimony was provided on the premium savings customers would realize if the bill draft were enacted, it was argued that the bill draft may prevent a cost increase. It was argued that the problem to be solved by the bill draft is not that great a problem in relation to the damage the change could cause.

Committee discussion included that the reason people have insurance is to pass the cost of a particular risk to an insurance company. Most people assume they are covered in most situations. With respect to the cited situation, most parents would want their child covered under the automobile insurance policy. The committee was informed that insurance customers want coverage for any situation in which they may be injured but do not want to pay premiums for something on which they do not expect coverage.

Committee members expressed concern as to how people would insure for this situation if the bill draft were enacted.

No-Fault Insurance

The committee received testimony from various automobile insurance companies and associations representing insurance companies. The committee was informed that mandatory no-fault insurance needs to be repealed or have major changes made to it so that automobile rates can be lowered. The committee was informed that customers want a good portion of the insurance premium returned as benefits.

The committee was informed the major problem with no-fault insurance is that it is mandatory. Because the insurance is mandatory, it was argued the automobile insurance companies are unable to implement cost-containment measures. Removing the mandatory nature would reduce the opportunity for abuse and would give insurance companies the ability to address problems.

The committee was informed that no-fault benefits are broader than most health insurance benefits and the insured does not have any out-of-pocket expenses. Because of the lack of cost-containment measures, there is an incentive for the insured and the health care provider to attribute any injury to a motor vehicle accident and to get as much treatment as possible. Under

no-fault insurance, an insured could receive some items and services not ordinarily covered by health insurance. For example, a lady received a prescription for a "new bed" to remedy her injured back and she bought a bed that cost in excess of $1,000. There is an incentive to continue treatment as long as possible. It is typical for benefits to be paid for months and years. With chiropractic care, medical expenses have been incurred for five or six years. In addition, the lack of a mandatory fee schedule encourages a health care provider to raise fees for services covered by no-fault insurance.

The committee was informed that it is expensive to administer no-fault insurance in comparison to health insurance. Health insurance covers treatment regardless of cause and no-fault requires a review of the cause of the injury. Each bill needs to be reviewed to determine if the injury was caused by the accident, if the treatment is medically necessary, and to determine if the individual has met the maximum medical improvement. In addition, each bill must be reviewed because of inadvertent billings--medical facilities do not differentiate on a billing whether the item was for an automobile accident or for something else. In addition, it was argued that there are some intentional billing problems that happen when a health care provider sends a bill to the automobile insurer to see if the bill will be paid.

The committee was informed that out of each $1 of no-fault premium, approximately 35 cents goes for administration and approximately 25 cents is attributable to the lack of cost-containment. Health insurance has approximately an eight cent administrative cost for each dollar of premium.

The committee was informed liability insurance is the most important kind of motor vehicle insurance because it protects innocent third parties. In the recent past, the percentage of individuals which have maximum limits on their liability insurance has decreased from 25 to 17 percent. It was argued that customers have lowered their liability insurance coverage to manage the cost of insurance. If no-fault insurance were repealed, customers would have more insurance dollars to spend on liability insurance. In addition, it was argued that uninsured motorists may buy insurance if they only had to purchase liability insurance.

The committee received testimony on permissive medical coverage for automobile insurance instead of mandatory no-fault. There would be options for the purchase of first-party medical coverage. Customers would be able to choose the amount of medical coverage they wanted based on need, instead of having a mandated amount. Before 1975 insureds purchased medical coverage instead of no-fault. In 1975 the average policy for medical coverage for automobile insurance was $5 per year. The committee was informed that medical coverage insurance allows insurance companies to control losses through cost-containment measures. However, the committee was informed that medical coverage option would have higher rates for comparable coverage because there would be a smaller pool of insureds.

Permissive medical coverage is used in South Dakota. However, one insurance company requires $2,500 in medical coverage for automobile insurance customers in South Dakota. The insurance is required because it prevents a lawsuit against the insured by a passenger in the insured's car when the passenger does not have health care insurance.

Committee discussion included that insurance companies are the insurance experts and should be allowed some latitude in tailoring an insurance product that is appealing to the consumer. One solution would be to mandate a limited no-fault coverage and allow additional coverage. To the contrary, it was argued that making minor adjustments to the no-fault law does not directly address the issue of whether no-fault insurance should be mandated. Committee discussion included that simplifying the no-fault law would open the law to legal arguments. It was argued that the way the law is written is fairly well-settled.

The committee received testimony on changes that would not require legislative action. Insurance companies could institute cost-containment measures on their own initiative. The committee was informed that it is impractical for automobile insurance to have preferred providers. Because no-fault insurance is mandated, automobile insurers do not have any leverage in negotiating preferred provider agreements. The committee was informed that a substantial share of the market is required for preferred provider agreements to work. There are approximately 85 companies that sell no-fault insurance in the state. Antitrust laws prevent automobile insurance companies from working together to set payment rates for medical care.

The committee was informed that an automobile insurer would not benefit from entering an agreement with a health care insurer for the administration of no-fault benefits. If there were an agreement, the cost of administration would be similar because of the more stringent review required for no-fault bills than health care bills.

The committee received testimony on the effect if no-fault insurance were repealed. Since the repeal of no-fault insurance in Colorado, premiums dropped 27 percent for required coverages and 15 percent for all insurance, including comprehensive and collision.

Arguments in favor of the repeal of no-fault insurance included that no-fault benefits few drivers. A very small portion of North Dakotans are injured in automobile accidents, but every driver has to pay for no-fault. In 2002 there were approximately 700,000 vehicles in North Dakota, 465,271 drivers, and approximately 4,883 people injured in automobile accidents.

The committee was informed that although one of the reasons for the adoption of no-fault was reduced litigation, litigation has not been reduced. A contrary argument, however, is that although North Dakota had increased tort filings from 1992 through 2001, being one of the few states with an increase, this state had the lowest number of tort filings nationally. Approximately 540 tort cases go to court each year. In addition, this

state has the lowest percentage of automobile cases as compared to any other state.

The main argument against the repeal of no-fault is that a repeal will result in a shift in cost to health insurance, which will result in people not being able to afford health insurance. In response, it was argued that South Dakota does not have mandatory no-fault insurance and has an almost identical percentage of individuals covered by health insurance as this state.

The committee considered a bill draft that repealed no-fault automobile insurance. Committee discussion included opposition to the repeal of no-fault automobile insurance. Committee discussion included that the repeal of no-fault automobile insurance would not be acceptable but modifications to no-fault automobile insurance would garner more support.

The committee considered a bill draft that modified no-fault insurance. Testimony in support of the bill draft pointed out that the most important changes are the changes with the most financial impact and the changes to bring coverage closer to the use of an automobile as an automobile.

The bill draft provided these modifications to the no-fault law:

- The vehicle the insured is in had to be in motion or the injury had to be caused by another vehicle to receive benefits. Testimony indicated that if no-fault coverage required a vehicle to be moving there would be sizable savings.
- Work loss, replacement services loss, survivors' income loss, and survivors' replacement services loss were removed as benefits. Testimony indicated that the removal of work loss and replacement services would not shift costs to health care insurance.
- Charges had to be usual and customary and incurred for reasonable and necessary treatment.
- Usual and customary charges were those on the Workforce Safety and Insurance fee schedule. Testimony indicated that use of that fee schedule would not be an effective means to prevent people from attributing medical problems to a car accident.
- There was a deductible of $250. Testimony indicated that a $250 deductible would not have a major financial impact.
- Chiropractic care, massage therapy, acupuncture, and physical therapy were limited to $500 or, in the alternative, charges for chiropractic care, massage therapy, and acupuncture were not medical expenses. Testimony indicated that if coverage for chiropractic care and massage therapy were removed from no-fault benefits, the expense ratio would drop approximately in half. The committee was informed that limiting chiropractic care and massage therapy to $500 with a $250 deductible would help because there would not be as much at stake so insurance companies would not oppose the charges as much and administrative costs would decrease. In opposition to these arguments, the committee was informed that chiropractic care is effective health care and is cost-effective. The committee was informed the State Board of Chiropractic Examiners is aggressively disciplining fraud and abusive providers.
- Charges for nonprescription drugs and experimental and medically unproven treatments were not covered. Testimony indicated that nonprescription drug coverage is expensive to administer because it is difficult to determine if the drugs are for the patient and as a result of the accident.
- Occupying a motor vehicle did not include getting in or out of the vehicle, but being in or upon the vehicle. It was argued that "or upon" should be removed because it leaves a gray area that courts could read expansively. It was argued that a person should be in the cab to have coverage under no-fault insurance--coverage for a person in the back of a pickup should be removed because public policy should not support encouraging people to ride in the back of pickups. In addition, a person injured on a trailer should not be covered--trailers are unsafe and do not have safety belts. Committee discussion included that if "or upon" is removed, the definition for motor vehicle should be changed to not include a trailer so there is consistency.
- Operation of a motor vehicle did not include maintenance or loading and unloading. Testimony indicated that no-fault currently covers an individual who is fixing a flat tire or making repairs under a motor vehicle and is injured when the vehicle falls on the individual. A person hit by another car while changing a flat tire would still be covered under the bill draft because that person would be considered a pedestrian.
- The threshold for serious injury was raised to $4,000 or, in the alternative, diagnostic testing was excluded from "serious injury." Testimony indicated that raising the threshold to $4,000 may or may not have an impact; however, removing diagnostic services from determining the threshold would have a great impact. Raising the threshold to sue for noneconomic loss from $2,500 to $4,000 may encourage people to have more unnecessary diagnostic testing. On the other hand, removing diagnostic services would remove the incentive for an individual to have many tests done which increases medical expenses so that the individual can initiate a civil action.
- Bills were required to be submitted to the insurance company within 45 days. Testimony indicated that certain providers do not bill for months or years, as opposed to a no-fault insurance company that must pay claims within 30 days. It was argued that the claim period of 45 days should be at least 90 days because it regularly takes 60 to 90 days to bill an insurance company.

- Failure to appear for an independent medical examination without good cause resulted in damages plus fees and costs. Testimony indicated there is only one tool insurance companies have to keep down costs--the independent medical examination. Insurers use independent medical examinations in under 3 percent of claims. The independent medical examination is costly and contentious. The committee was informed that people not showing up for independent medical examinations is a growing problem and there needs to be a penalty to address this problem. The committee was informed that some attorneys use the strategy of having clients not show up so that insurance companies have twice the cost as a means of punishing insurance companies for using this tool. Most doctors do not do independent medical examinations because they may be witnesses in a lawsuit.
- The reasonable charge by health care providers for making copies of records was set at $20 for the first 25 pages and 25 cents for each additional copy. Setting the cost at $20 for 25 pages was an attempt to arrive at a reasonable amount. It was argued that copies should not be a profit center for health care providers. On the other hand, it was argued that $20 for 25 pages may not be adequate, considering postage and other costs of administration.
- The statute of limitations was changed from two years to one year for the first claim for benefits and four years to two years when benefits have been provided. The reason for the limitations is to make sure that costs are related to the accident. Once a person makes a claim, that person can continue to make the claim.
- Equitable allocation of loss between insurance companies and subrogation provisions was repealed. North Dakota Century Code Section 26.1-41-17 relates to equitable allocation among insurance companies. If one individual drives a car and causes an accident with another car, the individual in the other car goes to that individual's insurance company to collect no-fault benefits. After that, the insurance company can proceed against the first individual's insurance company for equitable allocation. Under this procedure, insurance companies recover as much as they pay over time. This reimbursement system drives up the cost of administration with no benefit to insurers. Testimony indicated that the insurance companies widely agree as to removal of equitable allocation. Section 26.1-41-16 relates to the right of subrogation. This section includes individuals who do not have insurance in violation of the law and, for example, a construction company that leaves a hole in the road. The person who did not buy insurance would be relieved from liability if Section 26.1-41-16 is repealed. Testimony opposed the repeal of Section 26.1-41-16 because the ability to subrogate or not subrogate will not affect a customer's premium because a customer's premium is increased if the customer is at fault.

As a result of testimony on the original bill draft, the committee revised the bill draft:

- To remove language that would have changed coverage for chiropractic care, acupuncture, and massage therapy.
- To include injury sustained while maintaining a motor vehicle or while unloading or loading while occupying the vehicle. Committee discussion included a fear of what would happen by removing the language in some fact scenarios. Because the committee did not know of the complete effect of the change, it was argued that no change should be made at the present time.
- To leave the threshold for serious injuries at $2,500 but exclude diagnostic testing from determining that amount.
- To change the time that services are required to be billed from 45 to 90 days.
- To remove NDCC Section 26.1-41-16 on subrogation from the repealer clause.

The revised bill draft does not address the following concerns that were raised:

- Whether an individual should continue to be covered while upon a vehicle or on a trailer.
- Whether no-fault benefits should be lowered--North Dakota is one of six states with limits over $10,000 with a $30,000 limit.
- Whether there should be a clear guideline for discontinuing benefits following a specified lapse in treatment.
- Whether there should be a verbal threshold for serious injury.

Recommendation

The committee recommends Senate Bill No. 2047 to modify no-fault automobile insurance as described in this report.

RAILROAD RIGHT OF WAY STUDY - BACKGROUND MEMORANDUM

Senate Bill No. 2358, Section 5, required the Legislative Council to study the sale and lease of railroad rights of way. Sections 1 through 4 provide for limited indemnity provisions in contracts between railroads and grain and potato warehouses. The study appears to have resulted from the contentious nature of Senate Bill No. 2358 and from House Bill No. 1291, which provide for a priority and procedure for the sale of railroad right of way on a line that has discontinued service.

Railroad Right of Way

Because the bill specifies that railroad right-of-way property is in question, it should be noted that not all property owned by railroads is included within the study. Railroad right of way is the land on which railroad track is located and varies in width but is generally a width of 200 feet. As an example, some of the land owned by the

Burlington Northern Railroad Santa Fe Company was originally granted by the United States to the Northern Pacific Railroad Company by Congress in the Northern Pacific Act (Act of July 1, 1864, ch. 216, 13 Stat. 365 et seq.). The Northern Pacific Act gave the Northern Pacific Railroad Company the power to construct a continuous railroad from Lake Superior to Puget Sound. The Northern Pacific Act granted the railroad two different kinds of property. The railroad was granted a 200-foot-wide right of way along the entire length of the railroad. In addition, the railroad was granted every alternate section of public land on each side of the railroad line. The alternate section land grants are not railroad right of way.

In addition to the federal land grants to railroads, the state of North Dakota provided grants of land to railroads to encourage building of both main line and branch line railroads within the state. In 1893 North Dakota granted rights of way to railroads over state-owned land to build railroad lines. The rights of way granted were 100 feet wide, or 200 feet wide if necessary for construction, and at places where railroad stations were located the right of way was 300 feet wide and 1,600 feet long. The 1893 law provided that if any railway company appropriating public lands under the law abandoned the use of the lands for railway purposes, the lands abandoned would revert to the state.

In 2002 there were more than 3,700 miles of railway lines in North Dakota, a reduction from approximately 5,000 miles in 1979. Approximately two-thirds of the railway lines are branch lines. Railroads obtained most of the right of way for branch lines through purchase and condemnation.

One of the difficulties in discussing railroad right of way is the lack of uniformity and the usage of the term "right of way." A right of way in the legal sense as it relates to railroads is a mere easement for railroad purposes in the land of others. The general meaning of the term in railroad parlance signifies a possessory interest in land in which track is constructed. In addition to the property right, right of way is used to describe the strip of land used by a railroad as the word highway is used to define the strip of land on which people operate motor vehicles. Under the previous example, sometimes right of way is the ditch or both the ditch and the road.

Right of way is not defined under the North Dakota Century Code for the purposes of railroad right of way, and the use of the term appears to take on different meanings as required by the subject matter. Whatever property right is in the right of way is defined by the instrument through which the railroad received the property. Whether this be by federal charter, state charter, condemnation, or purchase, that document or grant of authority determines the legal interest of the railroad which may range from a license to fee simple ownership.

Statutory Framework

Grain and Potato Warehouses on Right of Way

North Dakota Century Code Chapter 60-06, originally enacted in 1890, provides that any person may erect and operate a grain or potato warehouse or elevator on railroad right of way upon compliance with the chapter. Upon application and payment of what the applicant deems reasonable compensation, the applicant is immediately entitled to erect the warehouse or elevator. In case the amount tendered in payment is not accepted, provisions exist for district courts to determine the proper payment. In addition, under Section 60-06-06.1 any party may petition the Public Service Commission to determine rights governed under Chapter 60-06. The right to elect to use the right of way under Chapter 60-06 also applies to renewal of leases. Chapter 60-06 has never been the subject of a North Dakota Supreme Court decision, so the constitutionality of that chapter is not assured.

During the 1987-88 interim, the Legislative Council's Business Committee studied railway right-of-way tenants. Representatives of the Soo Line Railroad and the Burlington Northern Railroad opposed any expansion of NDCC Chapter 60-06 beyond coverage of businesses handling grain or potatoes. They said grain and potato businesses require railroad access, but in other commercial ventures the need for railroad access does not exist. It was pointed out that legal considerations involving the freedom to make contracts, prohibition of laws impairing the obligation of contracts, the right to equal protection of the laws, prohibition of unreasonable restrictions on the use of private property, the exercise of the police power in regulation of business, prohibition of impairment of vested rights of corporate stockholders, the right to due process, and the right to compensation under eminent domain laws are all potential legal arguments that could be made against granting increased rights to tenants on railroad right-of-way property.

In 2003 the Legislative Assembly enacted Senate Bill No. 2358. Senate Bill No. 2358 created NDCC Section 49-16-01.1, which as a general rule prohibits a railroad from including within an agreement with a public grain or potato warehouse provisions for indemnification--reimbursement--of the railroad for damages caused by the railroad or for insurance to answer for damages caused by the railroad. The bill created an exception to the general rule by allowing a railroad to require commercial general liability insurance of not more than $2 million per occurrence and not more than $4 million for multiple occurrences for damages. A railroad may require indemnification in defense of the railroad or damages up to $2 million per occurrence arising out of the use or occupancy of the property. The bill also amended Section 60-06-06.1 to prohibit the Public Service Commission from considering the value of leaseholders' improvements in determining a reasonable lease rate or selling price. The bill also amended Section 60-06-15 by providing that the chapter applies to the sale of existing leaseholders on railroad rights of way.

The legislative history of the bill illuminates some of the arguments by the railroads. In summary, the railroads' argument was that railroads are engaged in an inherently dangerous activity. There are going to be accidents and derailments during this activity. Railroads have a right of way as a barrier between the railroad and

other people so as not to injure other people when there are accidents. If a person wants to locate a business on the right of way, that business should indemnify the railroad for the bad things that happen around an inherently dangerous activity. If the business does not like the indemnity conditions in a contract, the business does not have to agree and can locate in a safer area.

The legislative history also illuminates some of the arguments of warehouses against indemnity provisions. In summary, the main argument of the warehouses was that the provisions were unfair because the provisions were suddenly imposed in renewals and were not negotiable. Because warehouses have invested large amounts of money in buildings and infrastructure, warehouses cannot reject the provisions and move without incurring a great financial loss. In addition, if a warehouse did move, it would most likely want to move next to the railroad for the transportation services. This places warehouses in a very weak bargaining position.

Sale of Abandoned Right of Way

Under NDCC Chapter 49-09, the state regulates the acquisition and transferring of railroad property. Under Section 49-09-04.2, before August 1, 2003, when service is discontinued and the property is offered for sale, the property must first be offered for public purposes. Along abandoned rail lines, the lessee operators of grain and potato warehouses located on the right of way must be given the next option to acquire the property. Next, adjoining agricultural landowners are given the option to acquire the property adjoining the landowner's land.

House Bill No. 1291 (2003) made major changes to NDCC Section 49-09-04.2 effective August 1, 2003. When service is discontinued and offered, the property must be offered to the present owner or operator-lessee of fixed assets located on the property followed by a person owning land contiguous to the right of way on opposite sides of the right of way. Next, the property must be offered to a person representing a reasonable plan for public recreational use of the abandoned property followed by the adjoining landowner if the land is assessed for tax purposes as agricultural land. The bill required the railroad to provide notice to owners and operator-lessees of fixed assets of the railroad's intent to dispose of railroad right of way. The sale price of abandoned railroad property was required to be equitable. If a railroad complies with the priorities and notice requirements and five years have passed since abandonment or since service was discontinued, the railroad may deed the right of way to the county if the property is accepted by the county.

Under NDCC Section 49-09-04.3, a railway abandoning a rail line is to remove and clear railroad property and control noxious weeds on the right of way. Under Section 49-09-10.2, each carrier or other entity intending to acquire an operating railroad's right of way is required to file notice with the commission.

Jurisdiction Over Railroads

Under the commerce clause, Congress has the power to "regulate commerce with foreign nations, and among the several states, and with Indian tribes." Under the necessary and proper clause, Congress can "make all laws which shall be necessary and proper for carrying into execution" the commerce clause. The commerce clause is broad in scope and regulation under the clause may address any activity, even if entirely intrastate, that taken with other like acts affects commerce in other states. The necessary and proper clause is broad in scope and extends the commerce clause to anything appropriately related to railroads. In short, Congress has the power to regulate anything relating to railroads.

Economic Regulation

Under the Interstate Commerce Act of 1887, freight railroads became the first industry in the United States to become subject to comprehensive federal economic regulation. Railroads were regulated by the federal government through the Interstate Commerce Commission for the next 93 years. In 1980 Congress passed the Staggers Rail Act. The Staggers Rail Act deregulated the railroad industry, but not completely. The Interstate Commerce Commission retained authority to set maximum rates or take certain other actions if railroads were found to have abused market power or engaged in anticompetitive behavior. In addition, the Interstate Commerce Commission had jurisdiction over railroad line abandonments. With the passage of the Interstate Commerce Commission Termination Act of 1995, the Surface Transportation Board succeeded the Interstate Commerce Commission as the federal agency with jurisdiction over railroads. Under 49 U.S.C. § 10501(b), the Surface Transportation Board has **exclusive jurisdiction** over:

> **(1) transportation by rail carriers**, and remedies . . . with respect to rates, classifications, rules . . ., practices, routes, services, and facilities of such carriers; and
>
> (2) the construction, acquisition, operation, abandonment, discontinuance of a spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State, . . .
>
> [T]he remedies . . . with respect to regulation of rail transportation **are exclusive and preempt** the remedies as provided under Federal or State law. (emphasis supplied)

Transportation is defined as including property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail and services related to that movement, including receipt, delivery storage, handling, and interchange of passengers and property. Rail carrier is defined as a person providing common carrier railroad transportation for compensation. Railroad is defined to include a switch, spur, track, terminal, terminal facility and freight depot, yard, and ground, used or necessary for transportation.

In exercise of commerce power, Congress has preempted most economic regulation of railroads. There are three forms of preemption--express, field, and

conflict. Express preemption is when Congress explicitly preempts state law. Field preemption is when congressional regulation of a field is so pervasive or the federal interest so dominant that the intent to preempt can be inferred. Conflict preemption is when a state law stands as an obstacle to the purpose of a federal statute. When the preemption is explicit, the first step is to look at the plain meaning of the statute. However, there is a presumption against the federal government supplanting the historic state police powers unless preemption is the clear and manifest purpose of Congress.

In addition to having exclusive jurisdiction over "transportation by rail carriers," the broadly inclusive phrase "regulation of rail transportation" evidences congressional intent to preclude state remedies for violation of any state laws or rules regulating rail transportation. As stated in *CSX Transportation, Inc. v. Georgia Public Service Commission,* 944 F. Supp. 1573 (N.D.Ga. 1996), "[i]t is difficult to imagine a broader statement of Congress's intent to preempt state regulatory authority over railroad operations." In *Burlington Northern Santa Fe Corporation v. Anderson*, 959 F. Supp. 1288 (D. Mont. 1997), the court stated the "federal scheme of economic regulation and deregulation is intended to address and encompass all such regulation and to be completely exclusive." In *City of Auburn v. U.S. Government*, 154 F.3d 1025 (1998), cert. denied, 119 S. Ct. 2367 (1999), the Ninth Circuit Court of Appeals concluded noneconomic regulation can turn into economic regulation if the carrier is prevented from constructing, acquiring, operating, abandoning, or discontinuing a line.

Although case law shows a trend toward an expansive reading of the Interstate Commerce Commission Termination Act, there has to be a line at which the reach of the Act ends or the states could not have any laws because all laws, even if remotely, tangently related to railroads, have an economic effect on railroads. That line has not been clearly defined in case law.

A trickle of recent cases has found no preemption in areas that are tangental or remote. In *Florida East Coast Railway Company v. City of West Palm Beach*, 266 F.3d 1324 (2001), the Eleventh Circuit Court of Appeals found that city regulation by zoning and occupational licensing of a lessee of railway property which was engaged in the business of a distribution center involving unloading railcars was allowed. The court found a presumption against preemption that dictates if 49 U.S.C. § 10501(b) "can be read sensibly not to have a pre-emptive effect, the presumption controls." In addition, state tort and property law claims relating to negligence and nuisance for the railroad's construction of an earthen berm that caused damage though water damage was not preempted. The United States District Court in *Rushing v. Kansas City Southern Railway Company,* 194 F. Supp. 2d 493 (S.D. Miss. 2001), held the economic effect of the railroad paying damages and removing the berm was not the type of economic regulation addressed by the Interstate Commerce Commission Termination Act.

Safety Regulation

The federal regulation of railway safety is accomplished through the Federal Railway Safety Act. In the Act, Congress has expressly provided for state regulation of railroad safety. Under 49 U.S.C. § 20106, national uniformity is provided as follows:

> Laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security shall be nationally uniform to the extent practicable. A State may adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the State requirement. A State may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order--
>
> (1) is necessary to eliminate or reduce an essentially local safety or security hazard;
> (2) is not incompatible with a law, regulation, or order of the United States Government; and
> (3) does not unreasonably burden interstate commerce.

In addition, under 49 U.S.C. § 20113, a state may enforce federal safety regulations in certain circumstances if the state is certified to investigate railroads for violations under 49 U.S.C. § 20105.

In *CSX Transportation, Inc. v. Easterwood*, 113 S. Ct. 1732 (1993), the United States Supreme Court found that language under the Federal Railroad Safety Act preempted the state common-law duty to operate a train at a safe speed. The Court said that federal regulation of speed limits should be understood as "covering the subject matter" of the state law. Under *Burlington Northern and Santa Fe Railway Company v. Doyle*, 186 F.3d 790 (1999), the Seventh Circuit Court of Appeals opined that even nonregulation can be regulation preempting state regulation. This happens when the Federal Railroad Administration has examined and determined that there is no need for regulation.

Congress has provided for specific regulation of different aspects of railway safety under 49 U.S.C. §§ 20131 through 20153, and the Federal Railroad Administration has made many rules relating to these areas of railroad safety. There are statutes or rules relating to noise omissions, whistles, locomotive boiler inspections, and safety as to cars and the coupling of cars, among other things. Whether a certain state action is preempted depends upon the type of regulation. For example, locomotive boiler inspection and car safety are preempted through field preemption. In other areas, there may be no rule or rules that allow cooperation between state and federal authorities. Any state regulation of safety requires a review of federal law and

Federal Railroad Administration rules to determine if the regulation is preempted or allowed and, if allowed, in what measure. The courts give great weight to an agency delegated with authority over an area to determine whether a state law should be preempted.

In *CSX Transportation, Inc. v. City of Plymouth,* 283 F.3d 812 (2002), a statute similar to NDCC Section 49-11-19 was reviewed to determine if the state regulation was preempted by federal regulation. The Michigan statute prohibited trains from continuously blocking grade crossings for more than five minutes. There were two exceptions to the prohibition--if the train is continuously moving in one direction, then the train can block a grade crossing for up to seven minutes and if the train stopped because of an accident, mechanical failure, or unsafe condition. Federal regulation provides for the regulation of speed, length, and brake testing. The Sixth Circuit Court of Appeals found that these regulations preempted Michigan's law because the amount of time a moving train spends at a grade crossing is mathematically a function of the length of the train and the speed the train is traveling. As such, the federal regulations substantially subsume the subject matter of the state statute.

Testimony and Discussion

Operation and Effect of Recent Changes in Law

Because Senate Bill No. 2358 (2003) and House Bill No. 1291 (2003) did not take effect until August 1, 2003, it was too early to determine the effect of the bills. However, the new laws did not result in any preemptive action by the railroads before the effective date of the laws. In addition, Senate Bill No. 2358 applies solely to new leases and renewals of leases so the bill will have a very limited effect in the near future.

The committee was informed that because of Senate Bill No. 2358, it will be more difficult to manage liabilities on leased property. The committee was informed that the railroad will have to look at leases more closely to see if the risks of leasing can be covered by the insurance and indemnity provisions allowed by state law. The committee was informed that the law may limit the railroad to offer leases only to small entities for which the limits in the law will adequately cover the risks engaged in by a small entity. In addition, a large entity may have to pay higher prices to make the lease of railroad right of way profitable.

The committee was informed that a portion of Senate Bill No. 2358 was codified in NDCC Section 49-16-01.1(3)(a)(1), which sets limits for commercial general liability insurance that a railroad can require of a grain elevator at $2 million per occurrence and $4 million for multiple occurrences. This coverage is for damage caused by the sole or concurrent fault of the railroad, its employees, agents, and contractors. It was argued that the word "sole" should be removed and that damages should be shared in relation to responsibility.

The committee was informed that under House Bill No. 1291, the sale price of abandoned railroad property must be equitable and that the language expresses a legislative intent that the sale price be comparable to the value of the surrounding property. The committee was informed that the railroads support the change in the law relating to the priority of sale of abandoned property.

Insurance and Indemnity Provisions

The committee received testimony against insurance and indemnity provisions in contracts with railroad companies. An elevator needs the services of its lessor, the railroad. Although elevators do ship some product in state by truck, elevators use the railroad to ship in excess of 80 percent of all shipped product. It was argued that if the farmers in this state moved much more grain by truck, it would severely impact roads.

The committee was informed that even more so than other industries, railroads have a social responsibility to pay for and protect the public from the railroad's negligence. Railroads obtained right of way as a form of government-supported economic development. It was argued that it is against public policy for a railroad to be able to contract away a liability on a public-supported industry. In addition, contracting away liability reduces the incentive for a railroad to be safe and removes the ability of the insurer to take risk reduction efforts in cooperation with the insured.

The committee received testimony from the two major railroads in this state--the Burlington Northern Sante Fe (BNSF) Railway Company and the Canadian Pacific (CP) Railway Company. The Soo Line Railroad Company is a wholly owned subsidiary of the Canadian Pacific Railway.

The committee was informed that CP obtained most of its property in this state in fee title and through negotiation, not condemnation or grant. Therefore, the railroad does not owe a higher duty than other industries. In addition, the railroad obtained the property for transportation purposes, not leasing purposes. In short, any duties would relate to transportation, not leasing.

The committee was informed that railroads do not have an unfair advantage in bargaining with lessees. Although a railroad is a local monopoly, each railroad has competition statewide with other railroads and short lines. A railroad does not have a monopoly on real estate. Most leases have nothing to do with the provision of shipping services by a railroad. In addition, an elevator does not have to be located on railroad property. An elevator can be located on a spur track or siding owned by the elevator.

The committee was informed insurance and indemnity provisions are not new or unique. Some leases have had the same terms for over 100 years. The provisions in ground leases are standard provisions and lease provisions for elevators are the same as for other commercial ventures. In fact, the state of North Dakota uses similar provisions in ground leases with other entities.

The committee was informed the insurance and indemnity provisions are needed to manage risk. The provisions protect the lessor from the liability that would not be there but for the lessee. In general, leases indemnify a railroad for everything except gross negligence or willful misconduct. Public policy dictates that

the liability burden be on a lessee because the lessee is in control of the property and is in the best position to keep it in safe condition. In addition, a railroad cannot obtain insurance for all the different kinds of risks posed by all the different kinds of tenants. The increased cost of insurance for being located next to a railroad should be incremental to the lessee, unless the lessee does not have enough insurance in the first place.

The committee was informed that without insurance or indemnity provisions the railroads would have to manage the risk by raising rates, requiring damage deposits, or other actions. Some states have regulated railroad lease rates and these states have required higher rents so that rates do not subsidize rents. The committee received testimony from BNSF on leases in this state. The average lease rate is $1,709 per year. The lowest lease rate is $25 and the highest lease rate is $17,000. The average lease rate for 168 elevators is $2,337 per year. The railroad pays approximately $10 million per year for property management services.

The committee was informed there are many costs associated with leasing property. For instance, sometimes lessees abandon property and the railroad must expend substantial sums in demolition. In addition, environmental investigation and cleanup for a site abandoned by a lessee can result in a sizable cost to the railroad. A lessee in Belfield left the railroad with $150,000 in demolition costs after the lessee paid $3,000 per year in rent. Burlington Northern Santa Fe has been informed of approximately $10 million more in liability for future abandoned property.

Committee discussion included the landlord-tenant relationship between a railroad and lessees is different from most landlord-tenant relationships. It was argued that even though a railroad says the railroad should be able to transfer risk like an ordinary landlord does with a tenant, a railroad is different from most landlords because most landlords do not engage in high-risk activities.

Federal Employers Liability Act Endorsements

Railroad employees are covered by the Federal Employers Liability Act (FELA) rather than workers' compensation. The system created under FELA is a tort-based system and a railroad is liable for the amount proved in court. A FELA insurance endorsement is required of a lessee.

The committee was informed that FELA endorsement protects the lessee. If an employee is injured on a lessee's property, the employee will most likely sue the railroad and the railroad would most likely bring the lessee into the action if the lessee was negligent. If the lessee and the railroad are both at fault, the FELA endorsement pays for the negligence and prevents the lessee and railroad from fighting each other as well as fighting the employee.

Availability of Insurance

The committee was informed by an insurance provider that in reference to insurance purchased for property under a railroad property lease agreement, it is an incorrect assumption that the insurance contract will cover the indemnification of railroads for their negligent acts. In addition, an insurance company will not insure an unnamed third party for that party's negligent acts. Insurance insures the insured for negligent acts.

The committee was informed there are only three companies that sell insurance to grain elevators. The committee was informed that insurance companies are not willing to provide coverage for what is being asked for in leases. For example, commercial general liability policies have an absolute exclusion for pollution and leases require the lessee to indemnify the railroad for pollution. Although some companies provide limited premises pollutant cleanup, the coverage is limited and very expensive.

The committee was informed there is not a private company that provides an endorsement for FELA claims. The committee was informed there may be some confusion because the insurance industry has been issuing policies based on old leases and has not reviewed the new leases to see if there have been changes. The committee was informed that once the industry reviews the new leases, the industry probably will not provide coverage. The committee was informed the average grain elevator cannot find an insurance company to issue a Federal Employers Liability Act endorsement. However, BNSF's risk management department contends FELA endorsements are available in the marketplace.

Licenses

The committee was informed some utility providers have concerns with licenses to use railroad right of way, including the length of time it takes to acquire a permit, the fees charged for a permit, insurance requirements, and the arbitrary addition of new conditions without notice.

The committee was informed by BNSF that the typical rate for a licensee to use railroad right of way for utility purposes is a one-time fee of $2,500. This amount has recently been reduced to $750 for not-for-profit companies and governmental entities. Each permit must be accompanied by a railroad protective liability insurance policy that costs between $2,000 and $2,500 and may cover solely one day's work. The railroad asks for railroad protection insurance if there is going to be demolition or construction conducted by the lessee close to the track. The committee was informed that BNSF provides an umbrella policy that could be purchased for much less than a railroad protective policy.

Sales

The committee was informed that the sale of leased property is lessee-driven; however, the railroad is under no obligation to sell. In the sale of noncorridor property, lessees are usually given the first opportunity to buy property to which they hold the lease. The sale price is based upon the market value of the land, subject to a minimum. The minimum for CP is $10,000 for the sale of property, subject to a recommendation for a lower amount by an area manager. Most sales in rural areas

are at the minimum. A sale price of 10 times the annual lease rate is a rule of thumb for the sale of railroad property. The normal variance is from 8 to 12 times. Generally, the railroad's preference is not to sell corridor property. The operating corridor of the railroad is 50 feet on each side of the track. If the right of way is sold, it does not include the operating corridor, which is covered by an easement.

The committee was informed it is imperative that lessees be able to purchase land from the railroads, otherwise the property will become dilapidated. The sale of property increases the property value and hence taxes and provides for new jobs.

Switches

The committee received testimony on the allocation of switching costs to elevators. The railroad has been requiring the shipper to pay for maintenance of the switches. These bills are between $500 to $1,000 per month. Shippers pay for maintenance costs and do not argue over that payment because the shipper is reliant on the railroad.

Recently, CP has stated that a shipper will have to pay for the entire switch. Burlington Northern does not charge for switches. The cost of a switch is approximately $100,000. Most elevators require two switches for accessing the main track. A switch is on the main line and suffers wear and tear from trains operating on the main line. The elevator owns the siding. The committee was informed that an elevator was told by CP that if the elevator does not pay for the switch going to the elevator, CP will bypass the elevator. It was argued that it is unfair for CP to charge for switches because CP controls the switches as to when they are replaced or maintained and creates the most wear and tear on the switch.

Under the contracts with the elevators, CP may bill for the switches. The Canadian Pacific position is that the customer is contractually responsible for the switches. In response to the concerns of grain elevators, CP has developed a new program to bill for switches over a period of years at $6,000 per year per switch.

Committee discussion included that the entity that provides the wear and tear on a switch should pay for the switch. It was argued that it will be impossible for small shippers to pay for switches.

Regulation of switches and the cost of maintenance, however, appears to be preempted by the Interstate Commerce Commission Termination Act.

Conclusion

The committee makes no recommendation with respect to its study of the sale and lease of railroad right of way.

ALTERNATIVE FOR MOTOR VEHICLE LIEN FILING STUDY

Senate Concurrent Resolution No. 4011 directed a study of the alternative methods for recording and discharging a lien on a motor vehicle. The resolution states the reasons for the study include problems with a lien on a motor vehicle not being properly recorded or discharged and the availability of new technologies to simplify the procedures and requirements relating to recording and discharging a motor vehicle lien. The main problem discussed in the testimony related to this study arises when a lending institution releases a lien on a motor vehicle and mails it to the owner and the owner has moved or the owner receives the title with the lien release and thereafter loses the title. Although either situation may be remedied, a later sale of the motor vehicle may be delayed.

Legislative Framework

North Dakota Century Code Chapter 39-05 provides for title registration for vehicles. There is a different procedure under Chapter 39-04 for vehicle registration. A title registration is done to show ownership, while vehicle registration is done to license the vehicle for operation on the public highways in this state.

Generally, the owner of a vehicle is required to obtain a certificate of title for that vehicle. A vehicle that is not titled may not be registered. A vehicle that is not registered may not be driven on the highways of this state.

The study focused on liens in the title registration process. There are different instances for which a lien, sometimes called a security interest, may be noted on the face of a title. The most common instance is when a buyer purchases a new or used motor vehicle with borrowed money for which the buyer gives a lien on the vehicle as collateral for the loan by the person that loaned the money. Another instance is when the owner of a vehicle uses a motor vehicle as collateral for a loan made for a purpose other than buying the vehicle. Another instance occurs when a storage or repairman's lien is placed on a vehicle for unpaid storage or repair bills. In every instance, the person with the first lien has or should have the title.

The instances in which a lien may be removed from the title are threefold. In the first instance, the loan is paid off and the owner retains the motor vehicle, i.e., the lien or security interest is satisfied and there is no transfer of the vehicle. In the second instance, the lien is satisfied as part of a transfer of a motor vehicle to a dealer as a trade-in on another vehicle. In the third instance, the motor vehicle is sold and as part of that sale the proceeds are used to satisfy the lien so that the buyer has clear title.

Section 39-05-05 provides for the application for a certificate of title. An applicant for a certificate of title must provide among other information a statement of the applicant's title and other liens and encumbrances on the vehicle along with the names and addresses of any lienholders in the order of their priority with the dates of the security agreements to the Department of Transportation. If a new vehicle is purchased from a dealer, the applicant is required to submit a certificate of origin with a statement of the transfer by the dealer and any lien retained by the dealer or other lienholder before the department issues a certificate of title. The lienholder is considered the legal title owner, and the department sends the title to the lienholder.

Section 39-05-09 provides for the contents of a certificate of title. A certificate of title must contain, among other things, a statement of the owner's title, of all liens and encumbrances upon the vehicle, and whether possession of the certificate of title is held by the owner or lienholder. The reverse side of the certificate contains a space for the notation of liens and encumbrances on the vehicle at the time of a transfer. The amount of the lien is not required to be placed on the certificate of title, and the department is to deliver the certificate of title to the owner or first lienholder.

Under Section 39-05-09.1, if a certificate of title is lost or destroyed, the first lienholder or, if none, the owner, is to apply for a duplicate title. The title is mailed to the first lienholder named on the title or, if none, to the owner.

Section 39-05-16.1 provides for the release of a security interest. This section requires the lienholder upon the satisfaction of a security interest to execute a release. The release must be issued within 10 days after demand and in any event within 30 days. The lienholder is to deliver the certificate of title and release to the next lienholder or, if none, to the owner. If the next lienholder receives the title and release, the lienholder is to deliver the title and release to the department. The delivery must occur within 10 days after demand and in any event within 30 days. The department then issues and delivers the title to the first lienholder on the title. If the owner receives the title and release, the owner is to deliver the title and release to the department within 30 days. The department then issues a new certificate of title and delivers it to the owner.

Section 39-05-16.1 also provides for the procedure of releasing a security interest when the lienholder does not have possession of the title, e.g., the possession of the title lies with another lienholder. In this instance, the lienholder whose security interest is satisfied is to execute a release and deliver the release to the owner. The lienholder in possession of the title upon receipt of the release is to deliver the release and the title to the department. The department then issues a new certificate to the lienholder.

Section 39-05-17 provides for the transfer of a title. The owner of a motor vehicle who sells the vehicle endorses an assignment and warranty of title on the back of the certificate of title and verifies whether there are liens or encumbrances on the vehicle. The owner is to deliver the certificate of title to the purchaser if title passes to the purchaser. If the title does not pass to the purchaser, the lienholder endorses a statement that the lienholder holds a lien and sends the title to the department with the application of the purchaser for a new certificate of title showing the name of the owner and lienholder, which is returned by the department to the lienholder who retains the title until the terms of the lien are satisfied by the purchaser. After showing the lien has been satisfied, the lienholder is to deliver the certificate of title to the purchaser. The purchaser is required to present the title to the department within 30 days, and the department is required to issue a new certificate of title. If there is another lienholder, the department is required to deliver the title to the lienholder with priority.

Under Section 39-05-17.1, when a vehicle is sold, the seller is to deliver the certificate of title within 15 days to the buyer, unless the vehicle is subject to any liens, then the title must be delivered to the first lienholder.

Under Section 39-05-17.3, a transaction does not create a security interest because an agreement provides that the rental price may be adjusted by reference to the amount realized upon sale.

Testimony and Discussion

The committee was informed by a representative of the Department of Transportation that the department has investigated electronic filing of liens and could allow financial institutions to voluntarily engage in the electronic filing of liens but cannot mandate the filing of electronic liens.

The committee reviewed a bill draft that authorized an electronic lien notification procedure. Testimony in support of the bill draft indicated the initial attachment of the lien would follow the same procedure as it does presently--a paper application procedure. The department is investigating placing automobile dealers online so dealers can access the department's computer system and enter liens.

The committee was informed the Department of Transportation envisions lockbox companies would handle lien transactions for financial institutions. The financial institution would not need to possess the certificate of title. On removal of the lien, the lender would send notice to the lockbox company and the lockbox company would notify the Department of Transportation. The Department of Transportation would send the title to the owner.

There is great potential for lockbox companies to market this service to large financial institutions. The costs would be borne by the lockbox company and passed on to the lender. The reason for a lockbox company and for not having the department provide this service to every lienholder is the cost to the department.

The committee was informed of benefits offered by an electronic lien notification system. There is a benefit to an owner of a motor vehicle. Presently, the title with the lien release is mailed from the financial institution to the owner of the vehicle. Most owners do not file the certificate of title with the Department of Transportation, thereby removing the lien from the title, because of the cost. This failure to file creates a problem if the owner loses the title and then tries to sell the vehicle. The electronic lien notification procedure would remove any attendant delay in obtaining a replacement title. Under the electronic lien notification system the owner would be mailed a title with the lien already removed. In short, the benefit to a customer under the electronic lien notification system as compared to the present system is when the customer loses the title with a signed lien release.

The committee was informed the most benefited party would be financial institutions. Under the electronic lien notification system there is a reduction in storage and document tracking for vehicle titles and other benefits, including the reduction of forms, less mailing costs, and better customer service. There would be other

savings as well. When there were floods in Grand Forks, one bank lost over 5,000 titles and had to have duplicates issued to the bank. Under an electronic lien procedure, the bank would have lost nothing.

There would be a small savings to the department in postage and handling. The committee was informed an electronic lien notification procedure would not affect automobile dealers.

The committee was informed large lenders support electronic liens and would pay for the cost of filing liens electronically. The largest lenders are out-of-state auto dealer lenders, for example, GMAC and Chrysler Financial, and after these lenders, the next largest lenders in state are US Bank, Capital Credit Union, and the military credit union. The committee received letters from the Nissan Motor Acceptance Corporation, US Bank, and Chase Auto Finance in support of the creation of an electronic lien notification procedure as well as testimony from Capital Credit Union. The committee was informed that whether the electronic lien notification procedure is useful to a financial institution will depend upon the procedures adopted by the department. The committee was informed that the department will work with lenders to provide the most cost-effective and desirable procedure.

Recommendation

The committee recommends House Bill No. 1044 to create an electronic lien notification procedure for motor vehicles.

SNOWMOBILE, ALL-TERRAIN VEHICLE, MOTORCYCLE, AND LOW-SPEED VEHICLE DEALERS STUDY

Senate Concurrent Resolution No. 4030 directed a study of the requirements for the registration and licensing of snowmobiles and all-terrain vehicle dealers. The resolution states this state does not have licensing requirements for snowmobile and all-terrain vehicle dealers but has requirements for other vehicle dealers. The resolution states there have been problems with snowmobile and all-terrain vehicle dealers who have failed to deliver certificates of title or remit fees collected on behalf of customers. The testimony on the resolution indicated there have been dealers that have gone out of business and have not returned deposits on equipment paid for by customers or have not delivered titles on equipment on which customers have already paid fees and taxes.

The Legislative Council chairman authorized the expansion of this study to include the licensing of motorcycle and low-speed vehicle dealers based on the reasons presented by the Department of Transportation. Representatives from the Department of Transportation presented several reasons in support of the study expansion. First, licensing would provide consumer protection. In particular, if dealers are bonded, protection would be provided to customers who have paid fees or payments to a dealer without receiving documents or delivery when that dealer goes out of business. Second, low-speed vehicle dealers were combined with snowmobile and all-terrain vehicle dealers in a recent Attorney General's letter opinion 2003-L-29 not allowing the department any regulatory authority over the dealers of these vehicles. Third, certain motorcycle dealers have requested more regulation similar to the regulation over new and used motor vehicles. In addition, any bill draft resulting in the licensing of snowmobile or all-terrain vehicle dealers would most likely be based on the present licensing of motorcycle dealers; hence, any changes in the motorcycle dealers' law should be made at the same time to promote consistency in the law.

Licensing of Motor Vehicle Dealers

Motorcycle dealers are licensed under NDCC Chapter 39-22.3. Under Section 39-22.3-01, a person in the business of buying, selling, or exchanging motorcycles must have a motorcycle dealer license. The motorcycle dealer license fee is $25 per year and includes one dealer plate. Additional dealer plates may be obtained for $10 each. Under Section 39-22.3-06, all fees for the licensing of dealers are deposited in the highway tax distribution fund. Money in the highway tax distribution fund is divided among cities, counties, and the state highway fund.

Under Sections 39-22.3-02 and 39-22.3-03, a prospective dealer must pay $50 and apply on a form provided by the department and provide proof that the applicant has and will continue to maintain an established place of business. The central place of business must be within the state. An established place of business is a building at which the permanent business of bartering, trading, and selling motorcycles; the repair, maintenance, and servicing of motorcycles; and the storage of parts and accessories for motorcycles will be carried out in good faith. The term does not include a residence or temporary quarters. If the established place of business is made of more than one building, each building may not be located beyond 1,000 feet from any other building.

Under Section 39-22.3-05, the license applicant is required to furnish a surety bond that must be filed with the director of the Department of Transportation before issuance of a license. The bond must run to the state of North Dakota in the amount of $10,000. The bond must be conditioned on the faithful compliance of the applicant with all statutes and indemnify any person having a motorcycle transaction with the dealer from any loss or damage occasioned by the failure of the dealer to comply with these statutes.

Under Section 39-22.3-04, the director may deny an application or suspend, revoke, or cancel a license for any material misstatement in the application; for willful failure to comply with Chapter 39-22.3 or any rule; for violating any law relating to the sale, distribution, or financing of a motorcycle; for ceasing to have an established place of business; or knowingly permitting a salesman to sell a motorcycle for someone else other than the dealer or assign any benefit to another dealer.

Under Section 39-22.3-12, any person violating a provision of Chapter 39-22.3 for which another penalty is not specifically provided is guilty of a Class B misdemeanor.

Licensing of Snowmobile and All-Terrain Vehicle Dealers

Although there are specific licensing requirements for motor vehicle dealers under NDCC Chapter 39-22, trailer dealers under Chapter 39-22.1, and motorcycle dealers under Chapter 39-22.3, there are no specific dealer licensing requirements for snowmobile, all-terrain, or low-speed vehicle dealers. In an Attorney General's letter opinion 2003-L-29, the Attorney General stated there is no statutory authority for the Department of Transportation to license dealers of these kinds of vehicles nor adopt rules for licensing snowmobile, all-terrain, or low-speed vehicle dealers.

Snowmobile and all-terrain vehicle dealers do have certain duties and privileges. A snowmobile dealer may receive dealer registration numbers to be used on snowmobiles owned by the dealership. Under NDCC Section 39-24-03, a snowmobile dealer is entitled to be issued registration numbers distinctively marked as that dealer's registration numbers upon the payment of the appropriate fee. Under Section 39-29-03, an all-terrain vehicle dealer has the same privilege. Under Section 39-29-01.1, an all-terrain vehicle dealer has a duty to collect a $5 safety fee from each buyer and send the fee to the Parks and Recreation Department for deposit in the all-terrain vehicle fund for the purpose of all-terrain vehicle safety education and promotion. In addition, snowmobile and all-terrain vehicle dealers are required to follow the procedures for title registration under Chapter 39-05 which impose duties, including a dealer's duty to make specific inquiry as to the buyer's street address, city, and county, or township and county of residence and to have a separate certificate of title or other documentary evidence of the dealer's right to the possession of every vehicle in the dealer's possession.

Licensing of Low-Speed Vehicle Dealers

The registration of low-speed vehicles began with the passage of House Bill No. 1216 (1999). A low-speed vehicle is a four-wheel vehicle that is able to attain a speed of 20 miles per hour and not more than 25 miles per hour on a paved surface and does not exceed 1,500 pounds. In particular, a low-speed vehicle is an electric car made by Global Electric Motorcars, LLC, a DaimlerChrysler Company located in Fargo, the vehicles of which are known by the name GEM.

Testimony on the bill stated the bill "will assist this firm in marketing its product in our state and will also place us on the cutting edge among states . . . . In other words, the bill would allow the cars to be test driven in this state and would allow these cars to be purchased and used in this state."

House Bill No. 1216 was codified as NDCC Chapter 39-29.1. Section 39-29.1-04 relates to low-speed vehicle dealers. This section allows a dealer to apply for and receive registration numbers for use on vehicles owned by the dealer for a $20 fee. This section specifically exempts low-speed vehicle dealers from obtaining a motor vehicle dealer's license.

Testimony and Discussion

Low-Speed Vehicle, Snowmobile, and All-Terrain Vehicle Dealers

The committee reviewed a bill draft that would have licensed low-speed vehicle dealers. The bill draft imposed the requirements for trailer dealers on low-speed vehicle dealers. These requirements included a license, bond, insurance, and a place of business in this state. In addition, trailer dealers are allowed to purchase a rider on an automobile dealer's bond to be bonded to sell trailers. This allowance was included in the bill draft on low-speed vehicle dealers. There are 10 licensed dealers of low-speed vehicles. All low-speed vehicle dealers have some other dealership, except for Global Electric Motorcars, a company that manufactures low-speed vehicles in this state and sells directly from the factory.

The committee was informed by a low-speed vehicle manufacturer in this state that imposing no additional requirements on already licensed auto dealers that sell low-speed vehicles is appropriate.

The committee considered revisions to the bill draft which would have created a licensing procedure for low-speed vehicle dealers. The license was changed from a yearly license expiring on December 31 to a license that expires on March 31 of each odd-numbered year. A provision for additional dealer plates was included and the plates would be available for $20 each per license period. The language allowing a low-speed vehicle dealer to be bonded through a rider on the bond of an automobile dealer was removed because these types of riders are not offered in the marketplace and if a rider were offered in the marketplace, it would be allowed as long as it complied with the statutory requirements for the bond. All fees collected under the licensing structure would be deposited in the state's highway fund.

Committee discussion included that there is not any problem with low-speed vehicle dealers and hence a questionable need for the licensing of low-speed vehicle dealers. In addition, there is not a need to license low-speed vehicle dealers because most are already dealers of some other vehicle and low-speed vehicles will never be sold in great quantities in North Dakota because of the weather.

The committee considered a bill draft that would have regulated snowmobile dealers and a bill draft that would have regulated all-terrain vehicle dealers in the manner provided in the bill draft for the regulation of low-speed vehicle dealers. Each of the bill drafts were very similar except for the fees charged for the license application and for additional decals or plates. These fees matched what a person would pay when registering a snowmobile, all-terrain vehicle, or low-speed vehicle.

To all these bill drafts, the committee extended the time for a dealer to submit state fees, taxes, and applications collected on behalf of a customer to the Department of Transportation from 15 to 30 days and allowed

the director to waive a violation for good cause if the time taken by the dealer exceeded 30 days. This change was also made to the motorcycle bill draft discussed later.

Committee discussion included opposition to the bill drafts because of the need for multiple bonds if a person has multiple dealerships. It was argued that the law should provide flexibility so that a person with multiple dealerships could purchase one bond. Committee discussion included that the ability to purchase one bond is up to bonding companies and testimony received was to the effect that bonding companies do not sell one bond for multiple dealers. To the contrary, the committee was informed by a dealer that that dealer purchases bonds with riders for other vehicles sold.

The committee was informed that the bond form provided by the Department of Transportation for insurers to complete is specific to each type of dealership. The department could structure the form so that a bonding company could check off the appropriate vehicles that are covered under the bond as is allowed in the law relating to trailer dealers.

The committee revised the bill drafts relating to low-speed vehicle dealers, snowmobile dealers, all-terrain vehicle dealers, and motorcycle dealers to allow a dealer to purchase a rider on a dealer's bond for other types of dealerships.

Motorcycle Dealers

The committee considered a bill draft that would have related to the licensing of motorcycle dealers. The bill draft was in response to a request of the North Dakota Motorcycle Dealers Association. There are 72 motorcycle dealers in this state, and about 35 dealers are part of the North Dakota Motorcycle Dealers Association. The bill draft imposed most of the requirements of new and used automobile dealers on motorcycle dealers.

The bill draft contained provisions that paralleled the automobile dealer licensing law, including a sign requirement, a square-footage requirement, a separate license for new and used motorcycle dealers requirement, a four sales per year requirement, an administrative fee instead of a criminal penalty, authority for the department to limit the number of dealer plates, a normal business hours requirement, a telephone requirement, a heated and lighted place of business that is comfortable for customers requirement, and standard office equipment requirement. The purpose of these requirements was to make it easier to differentiate between legitimate and illegitimate dealers.

The committee considered revisions to the bill draft which were recommended by the Department of Transportation. The changes removed previous provisions on in-transit and demonstration plates and provided for the fees from the chapter to be deposited in the state highway fund for reasons of administrative convenience.

The committee was informed that the bill draft would address some small dealers not collecting the appropriate taxes and consumer protection issues related to the products some dealers sell. Some dealers abuse the license by using it to avoid fees and excise taxes on private vehicles. These dealers do not purchase motorcycles to sell, but to ride. The committee reviewed pictures of licensed motorcycle dealers that operate out of homes, unrelated businesses, and nondescript warehouses. Supporters of the bill draft emphasized they were not after anyone in a legitimate business.

Committee discussion included concern over dictating vague requirements such as standard business equipment and a comfortable place of business.

Committee discussion included questions whether the purpose of the bill draft was consumer protection or turf protection. It was argued that the motorcycle market is smaller than the motor vehicle market and should not have the same regulations.

Presently, a used motorcycle dealer may go to Canada or out of state and purchase a new motorcycle without paying the state tax, title fee, or registration fee and sell the new motorcycle to a customer who then pays the tax, title fee, and registration fee. The committee compared this situation to the same situation applied to a used automobile dealer. Once an automobile is taxed, the vehicle is a used automobile. If a used automobile dealer buys a new automobile, the automobile dealer would have to pay a civil penalty fee of $100 and pay the tax, title fee, and registration fee, as would the purchasing customer. A motorcycle dealer under the bill draft would have been subjected to the same treatment as an automobile dealer.

The committee received testimony in support of separate licenses for used and new motorcycle dealers. New dealers would be required to have a franchise or dealer contract. The committee was informed used dealers purchase Canadian merchandise and sell it in this state when the exchange rate drops under 60 cents per dollar because the sale becomes profitable at this point. The committee was informed these vehicles would not be able to be sold if separate licenses were needed for new and used motorcycle dealers.

Committee discussion included the view that it is not the legislature's place to regulate where people buy motorcycles for sale in this state. It was argued that dealers have the same opportunity to purchase Canadian or damaged motorcycles. Committee discussion included the opinion that the free market system, not the Legislative Assembly, should determine whether the public buys Canadian motorcycles.

The committee received testimony in opposition to having separate licenses for new and used motorcycle dealers and requiring new dealers to have a franchise. It was argued all dealers should be able to sell a new motorcycle if a new motorcycle is traded in or sold to the dealer because all dealers pay the same taxes on a new motorcycle. The committee was informed manufacturers regulate the new motorcycle industry and will take care of unauthorized sales. It was argued that if dealers have problems with Canadian motorcycles, the dealers should contact the factory representative.

The committee received testimony in opposition to the administrative fee for a first-time offense as being too high. The committee received testimony in opposition to the initial inspection fee. It was argued that $50, instead of $100, is enough for the initial inspection.

The committee received testimony in opposition to the mandatory fees in the bill draft because there should be an exemption for an honest mistake. It was argued the Department of Transportation should have some discretion over penalties.

The committee received testimony in support of mandatory fees. The department was against the discretionary issuance of citations for the violations of dealer licensing laws. The department does not want to have to make case-by-case determinations for every violation.

The committee received testimony in support of the requirement of four sales because illegitimate dealers usually do not keep records and could not prove four sales even if they had made four sales. Committee discussion included concerns that some motorcycle dealers buy motorcycles to sell for parts, and the four-motorcycle sale minimum would be a burden on these dealers.

The committee received testimony in support of liability insurance and bond requirements because it was believed these requirements would be an extra step that would prevent abusers from receiving dealers' licenses. The committee was informed insurance is a large fixed expense. The cost of insurance required by the bill draft would be about $500 per year. The committee was informed the cost of a bond is relatively small. The committee was informed the last audit of the department stated the opinion that surety bond for motorcycle dealers was too low.

The committee was informed the requirement for a 32-square-foot sign is so the public knows the person is in the business of selling motorcycles. Manufacturers require new motorcycle dealers to have certain signs. The requirements of the manufacturers exceed the sign requirements in law for used automobile dealers. Manufacturers may require signs that may be smaller than what is required by law; however, manufacturers require multiple signs.

The committee received testimony in opposition to the sign requirement and exception for manufacturer's signs. It was argued that a sign is a marketing decision and if a dealer does not have a good sign the dealer will not have customers. It was argued that it is unfair to provide an exception for signs of manufacturers as compared to the requirements for signs of motorcycle dealers.

Franchised dealers and independent dealers agreed it is not unreasonable to require that a dealer show four sales in the previous year, to have a commercial business site, and to obtain a bond and insurance. It was proposed that the franchised dealers and other dealers should work together to produce a bill draft that is agreeable to both parties. Committee discussion included opinions that there are some good things in the bill draft for making sure that dealers are legitimate, but other provisions should be removed.

As a result of interested motorcycle dealers meeting with a representative from the Department of Transportation and agreeing on the provisions of the bill draft, the committee considered revisions to the bill draft that related to removal of the requirement to repair, maintain, and service motorcycles; sign requirements; the name used for the franchise contract; removal of the requirement of providing fees, taxes, and applications to the department within 15 days; and the repeal of NDCC Section 39-22.3-07 relating to the prohibition of a dealer using a license to benefit another dealer. The committee was informed that all the parties agreed to all aspects of the revised bill draft except whether there should be a separate new and used dealership license.

The committee received testimony from independent dealers in opposition to the revised bill draft. An independent motorcycle dealer was not in support of the bill draft and provided letters from other independent dealers in opposition to the bill draft. The committee was informed the dealer would not have been legal under the rules in the bill draft if the rules had been in effect when the dealer started the dealer's business. It was argued the changes in the bill draft benefit the franchised dealer and not the independent dealer. The committee was informed the bill draft hurts small businesses and curtails competition.

The committee was informed independent dealers have to be creative to make a living and as such an independent dealer needs to sell new motorcycles as well as old motorcycles. The committee was informed that new Canadian units are sold as used to customers in this state by used dealers. In addition, some dealers use motorcycles to supplement income and not as a main source of income and do this at odd hours. It was argued that these dealers should not be put out of business by the new rules.

The franchised dealers defended the bill draft against the concerns of the independent dealers. The committee was informed the bill draft was not meant to put independent dealers out of business. The bill draft did not prohibit a dealer from selling motorcycles after normal business hours under the provision requiring normal business hours. It was argued only franchised dealers should be able to sell new motorcycles because it is unfair for a franchised dealer to invest in a dealership while other dealers can sell new motorcycles without the investment. The committee was informed that if an independent dealer wants a franchise, there are a number of franchises available. A person can become a franchised dealer for an investment of $25,000 to $30,000.

The committee received testimony in opposition to the requirement of having all paperwork and fees to the Department of Transportation within 15 days of the sale. The committee was informed that it may take more than 15 days for a check to clear. It was argued that a 25-day period would be more appropriate.

The committee received testimony in support of the concept of the 15-day requirement. The committee was informed the Department of Transportation needs some leverage over dealers to encourage the dealers to deposit fees with the department. Without this encouragement, dealers will hold the money for as long as possible to make money on the float. In addition, the bill draft also required paperwork to be sent to the

department within 15 days. Testimony indicated that customers come to the department, not the dealers, if the customers have not received the proper paperwork. Because of this, the department needs the paperwork as soon as possible. The committee was informed the department would work with a dealer and provide a time extension under certain circumstances. After being informed that a 30-day requirement with discretion to waive for good cause may be an acceptable solution, the committee considered a revision to the bill draft which modified the regulation of motorcycle dealers to include a 30-day requirement for dealers to submit fees, taxes, and applications to the state and allowed a waiver by the director for good cause.

Conclusion

The committee makes no recommendation with respect to its study of snowmobile, all-terrain vehicle, motorcycle, and low-speed vehicle dealers.

STUDY DIRECTIVES CONSIDERED AND ASSIGNMENTS MADE BY THE LEGISLATIVE COUNCIL FOR THE 2003-04 INTERIM

The following table identifies the bills and resolutions prioritized by the Legislative Council for study during the 2003-04 interim under authority of North Dakota Century Code Section 54-35-03.

Bill or Resolution No.	Subject Matter
1003 § 24	Continue the study of higher education, which may include use of the Higher Education Roundtable format to further refine the expectations of the North Dakota University System in meeting the state's needs (Higher Education Committee)
1004 § 14	Study the nursing home survey process, including a review of federal, state, and local agency procedures and requirements that result in additional costs, duplicated procedures, and added regulations for nursing homes, and the potential for mitigating the impact of new mandated federal rules through collaboration between the State Department of Health and the Department of Human Services and the submission of waiver requests (Budget Committee on Health Care)
1017 § 5	Study the impact of pending federal legislation that would significantly change the respective federal-state responsibilities and funding for workforce development, workforce training, public labor exchange, and unemployment insurance programs (Commerce Committee)
1155 § 1	Study the criteria by which a student's school district of residence is established and whether that criteria correctly assigns both benefits and responsibilities to the appropriate school districts (Education Committee)
1186 § 1	Study the leasing or renting of county court facilities by the state or other political subdivision (Judicial Process Committee)
1212 § 2	Study the effects and operation of requiring agency consideration of the effect of proposed administrative rules on small businesses, organizations, and political subdivisions (Administrative Rules Committee)
1386 § 1	Study North Dakota Century Code provisions requiring public officers and other individuals and entities to provide bonds, whether the state bonding fund is an appropriate entity to provide those bonds, whether private entities within the state provide bonds for public officials and other individuals and entities required to be bonded, and whether the bonds required by statute are appropriate and necessary (Public Services Committee)
1430 § 11	Study the value of medical assistance program use of benefit purchasing pools, preferred drug lists, and other pharmacy benefit management concepts, including the fiscal impact of the appeals and grievance process on existing programs (Budget Committee on Health Care)
1497 § 1	Study state government performance and accountability practices, including a review of other state's performance budgeting practices and strategic planning efforts and how those practices and efforts may apply to this state and improve this state's budgeting process (Government Performance and Accountability Committee)
1504 § 1	Study the state's business climate, including creation of an index of key objective measurements that address the state's competitiveness with other states; consideration of methods of creating business partnerships with North Dakota Indian tribes in order to increase primary sector business growth in the state; and active participation in the activities of the primary sector business congress (Economic Development Committee)
1505 § 13	Contract with consultants to conduct an information technology organizational study and an information technology management study (Information Technology Committee)
1506 § 6	Study the long-term needs of all state inmates and whether the Department of Corrections and Rehabilitation should continue to contract to house state female inmates with county jails or the

state should expand the prison system, including a review of the east cell block of the State Penitentiary and future needs for maximum security prisoners; the female population and related treatment, programming, and training needs; and the mental health services of the State Hospital, including whether the Department of Corrections and Rehabilitation should continue to expand its facilities on the State Hospital grounds and whether patients at the State Hospital with mental health needs should be served in other locations (Budget Committee on Government Services)

2008 § 4 Study the feasibility and desirability of transferring inspection and standards functions conducted by various state agencies to the Public Service Commission - Limited by Legislative Council directive to agriculturally related functions (Public Services Committee)

2012 § 14 Study administrative costs of human service programs, including costs incurred by the central office of the Department of Human Services, human service centers, and county social services, and review the effects of the 1997 "swap" legislation on state and county human service program costs (Budget Committee on Human Services)

2012 § 16 Study the feasibility and desirability of establishing an advisory council for the medical assistance program of the Department of Human Services - Expanded by the Legislative Council chairman to include a review of Medicaid payments, access to services, and utilization (Budget Committee on Health Care)

2015 § 41 Study public employee health insurance benefits, including options for providing health insurance for state employees, availability of other health insurance plans, single versus family coverage, employee contributions, and unitization of premium rates for budgeting purposes (Employee Benefits Programs Committee)

2252 § 5 Study consumer protection in regard to contractor competency and out-of-state contractors licensed in the state (Commerce Committee)

2262 § 1 Study the motor vehicle no-fault, underinsured motorist, and uninsured motorist insurance systems (Transportation Committee)

2310 § 1 Study issues related to wind energy development in this state - Revised by Legislative Council directive (Natural Resources Committee)

2358 § 5 Study the sale and lease of railroad rights of way (Transportation Committee)

2379 § 1 Study the doctrine of assumption of risk and the impact the reenactment of the doctrine would have on other state laws (Judicial Process Committee)

2418 § 1 Investigate the adoption of the No Child Left Behind Act of 2001, the direct and indirect impact of the Act on the school districts of this state, and the financial impact of the Act on the budget of this state and on the taxpayers of this state (No Child Left Behind Committee)

2421 § 32 Study the manner in which elementary and secondary education is funded in this state and the feasibility and desirability of instituting alternative funding methods (Education Committee)

3004 Study the state's method of providing legal representation for indigent persons and the feasibility and desirability of establishing a public defender system (Criminal Justice Committee)

3011 Study the North Dakota open records statutes and the appropriateness of the penalties for an unauthorized disclosure of certain records (Judicial Process Committee)

3037 Study the needs of individuals with mental illness, drug and alcohol addictions, and physical or developmental disabilities, including individuals with multiple needs, and how the state responds to those needs; the long-term plans for the State Hospital, the Developmental Center at Westwood Park, state and county correctional facilities, and other state facilities and the relationships among those facilities; the impact and availability of community services; the state's criminal justice process from arrest to release; alternatives to incarceration; and the effectiveness of incarceration and treatment (Budget Committee on Government Services)

3051 Study economic development efforts associated with and including establishment of a Red River Valley business and technology development zone and methods through which programs receiving funding from the United States Department of Agriculture rural economic area partnership, empowerment zone, enterprise community, and champion community programs can be enhanced (Economic Development Committee)

3052 Study school district data collection and reporting requirements (Education Committee)

3053 Study the state's emergency management system, the impact of federal emergency reorganization on the state's emergency operations plan, and the emergency management preparedness of state agencies and local governments (Emergency Services Committee)

3054 Study the state's public health unit infrastructure and the ability of the public health units to respond to public health issues, including disease and other physical health, environmental, and disaster-related issues (Emergency Services Committee)

3060 Study the state's unemployment compensation system, including reserve guidelines for the unemployment trust fund, the system for ratesetting, treatment of positive balance and negative balance employers, and the feasibility and desirability of creating an unemployment compensation board (Commerce Committee)

3061 Study the feasibility and desirability of enacting legislation to tax electric utility providers with a fair and uniform tax system (Electric Industry Competition Committee)

3062 Study vulnerable adult abuse and neglect with an emphasis on whether certain individuals should be required to report suspected incidents of vulnerable adult abuse and neglect (Criminal Justice Committee)

3072 Study possible methods of growing North Dakota's population, including approaches to decreasing outmigration and increasing in-migration, and review how other states are dealing with related population issues (Economic Development Committee)

3075 Study and identify federal and state policies that discourage or prevent final bond release applications from being filed, Public Service Commission regulatory policies that could be implemented to encourage flexibility in proving reclamation success and reducing regulatory burdens necessary for bond release applications, and actions being undertaken by the mining companies to achieve final bond release (Natural Resources Committee)

4001 Study the delivery of services and the cost versus benefit of those services provided by the eight human service centers, the possibility of combining service centers, the administrative costs of the centers related to the programs and clients served, and third-party reimbursement and competition with private providers (Budget Committee on Human Services)

4008 Study the need for guardianship services, standards and practices for guardians, and funding for programs for individuals with mental illness, vulnerable elderly individuals, and individuals with traumatic brain injuries (Criminal Justice Committee)

4011 Study alternative methods for recording and discharging a lien on a motor vehicle (Transportation Committee)

4016 Study those provisions of North Dakota Century Code Title 4 which relate to the powers and duties of the State Seed Commissioner and the State Seed Department (Public Services Committee)

4022 Study proposed legislation permitting the Game and Fish Department to coordinate with game and fish programs conducted by tribal governments (Natural Resources Committee)

4030 Study the requirements for the registration and licensing of snowmobile and all-terrain vehicle dealers - Expanded by the Legislative Council chairman to include the requirements for licensing motorcycle and low-speed vehicle dealers (Transportation 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 (Commerce Committee)
4-05.1-19(10)	Receive status report from the State Board of Agricultural Research and Education (Budget Section)
4-14.1-07	Receive statement from an ethanol production plant receiving ethanol production incentives indicating whether the plant produced a profit from its operation in the preceding fiscal year, after deducting ethanol production incentive payments received (Budget Section)
4-19-01.2	Approve use of moneys deposited in State Forester reserve account (Budget Section)
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)
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)
15-03-04	Approve any purchase of commercial or residential property by the Board of University and School Lands as sole owner (Budget Section)
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)
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)
15-10-41	Receive presentation from the State Board of Higher Education on definitions and eligibility criteria regarding its centers of excellence program relating to economic development (Economic Development 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 (Employee Benefits Programs Committee)
15.1-02-13	Receive from the Superintendent of Public Instruction the compilation of annual school district employee compensation reports (Education 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)
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)
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)
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)

18-11-15 Receive notice from a firefighters relief association concerning service benefits paid under a special schedule (Employee Benefits Programs 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 (Criminal Justice 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)

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)

23-38-02 Receive report from the State Health Officer not later than September 30, 2004, regarding implementation of the community health grant program (Budget Committee on Health Care)

25-04-02.2 Authorize Developmental Center at Westwood Park, Grafton, to provide services under contract with a governmental or nongovernmental person (Budget Section)

25-04-17 Receive report on writeoff of patients' accounts at Developmental Center at Westwood Park, Grafton (Legislative Audit and Fiscal Review Committee)

25-18-12 Receive reports during the 2003-04 interim from the Department of Human Services regarding the department's progress in developing a fee-for-service payment system for treatment or care centers (Budget Committee on Human Services)

26.1-50-05 Receive annual audited financial statement and report from North Dakota low-risk incentive fund (Legislative Audit and Fiscal Review Committee)

28-32-07 Approve extension of time for administrative agencies to adopt rules (Administrative Rules Committee)

28-32-10 Establish standard procedures for administrative agency compliance with notice requirements of proposed rulemaking (Administrative Rules Committee)

28-32-10 Establish procedure to distribute copies of administrative agency filings of notice of proposed rulemaking (Administrative Rules Committee)

28-32-18 Determine whether an administrative rule is void (Administrative Rules Committee)

28-32-42 Receive notice of appeal of an administrative agency's rulemaking action (Administrative Rules Committee)

36-22-09 Receive the audit report of the North Dakota Stockmen's Association (Legislative Audit and Fiscal Review Committee)

40-23-22.1 Approve waiver of exemption of state property in a city from special assessments levied for flood control purposes (Budget Section)

40-63-03 Receive annual reports from the Division of Community Services on renaissance zone progress (Economic Development 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 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)

45-10.1-71 Receive annual audit report from limited partnership receiving ethyl alcohol or methanol production

subsidy (Legislative Audit and Fiscal Review Committee)

46-02-05 Determine contents of contracts for printing of legislative bills, resolutions, journals, and Session Laws (Legislative Management Committee)

47-30.1-24.1 Receive report from the commissioner of University and School Lands identifying every state agency that has not submitted a claim for property belonging to that agency (Budget Section)

47-30.1-24.1 Approve state agency relinquishment of unclaimed property belonging to that agency (Budget Section)

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)

49-21-31 Receive annually a report from the Public Service Commission regarding payments received under the performance assurance plan and expenditures from the performance assurance fund (Budget Section)

50-06-05.1 Approve termination of federal food stamp or energy assistance program (Budget Section)

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)

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)

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)

52-02-18 Receive report of biennial performance audit of the divisions of Job Service North Dakota (Legislative Audit and Fiscal Review Committee)

54-03-26 Determine the fee payable by legislators for use of personal computers (Legislative Management Committee)

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)

54-06-26 Establish guidelines defining reasonable and appropriate use of state telephones by legislative branch personnel (Legislative Management Committee)

54-06-31 Receive periodic reports from the Central Personnel Division on the implementation, progress, and bonuses provided by state agency programs to provide bonuses to recruit or retain employees in hard-to-fill positions (Employee Benefits Programs Committee)

54-10-01 Approve the State Auditor's hiring of a consultant to assist with conducting a performance audit of a state agency (Legislative Audit and Fiscal Review Committee)

54-10-01 Determine frequency of audits of state agencies (Legislative Audit and Fiscal Review Committee)

54-10-01 Determine necessary performance audits by State Auditor (Legislative Audit and Fiscal Review Committee)

54-10-13 Determine when State Auditor is to perform audits of political subdivisions (Legislative Audit and Fiscal Review Committee)

54-10-15 Order the State Auditor to audit or review the accounts of any political subdivision (Legislative Audit and Fiscal Review Committee)

54-10-28	Determine information technology compliance reviews to be conducted by the State Auditor and receive the results of those reviews (Information Technology Committee)
54-14-03.1	Receive reports on fiscal irregularities (Budget Section)
54-16-04	Approve transfers of money or spending authority which would eliminate or make impossible accomplishment of a program or objective funded by the Legislative Assembly (Budget Section)
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)
54-16-04.1	Approve Emergency Commission authorization of state officer's acceptance of federal funds in excess of $50,000 if the acceptance of funds is not necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state (Budget Section)
54-16-04.1	Approve Emergency Commission authorization of state officer's expenditure of federal funds in excess of $50,000 if acceptance of funds is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state (Budget Section)
54-16-04.2	Approve Emergency Commission authorization of state officer's acceptance of funds in excess of $50,000 if the acceptance of funds is not necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state (Budget Section)
54-16-04.2	Approve Emergency Commission authorization of state officer's expenditure of funds in excess of $50,000 if acceptance of funds is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state (Budget Section)
54-16-09	Approve Emergency Commission authorization of transfer of spending authority from the state contingencies appropriation in excess of $50,000 if the transfer is not necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state (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)
54-27-22	Approve use of capital improvements planning revolving fund (Budget Section)
54-27-23	Approve use of cash flow financing (Budget Section)
54-27.2-03	Receive report on transfers of funds from the budget stabilization fund to the state general fund to offset projected decrease in general fund revenues (Budget Section)
54-35-02	Review uniform laws recommended by Commission on Uniform State Laws (Judicial Process Committee)
54-35-02	Establish guidelines for use of legislative chambers and displays in Memorial Hall (Legislative Management Committee)
54-35-02	Determine access to legislative information services and impose fees for providing legislative information services and copies of legislative documents (Legislative Management Committee)
54-35-02.2	Study and review audit reports submitted by the State Auditor (Legislative Audit and Fiscal Review Committee)
54-35-02.4	Review legislative measures and proposals affecting public

employees retirement programs and health and retiree health plans (Employee Benefits Programs Committee)

54-35-02.6 Study and review administrative rules and related statutes (Administrative Rules Committee)

54-35-02.7 Overview of the Garrison Diversion Project and related matters and any necessary discussions with adjacent states on water-related topics (Natural Resources Committee)

54-35-02.8 As the Legislative Ethics Committee--Consider or prepare a legislative code of ethics (Legislative Management Committee)

54-35-11 Make arrangements for 2005 session (Legislative Management Committee)

54-35-15.2 Review the activities of the Information Technology Department, statewide information technology standards, the statewide information technology plan, and major information technology projects; 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)

54-35-15.4 Determine information technology compliance reviews to be conducted by the State Auditor and receive the results of those reviews (Information Technology Committee)

54-35-18 Study the impact of competition on the generation, transmission, and distribution of electric energy within this state (Electric Industry Competition Committee)

54-35-18.2 Study the impact of competition on the generation, transmission, and distribution of electric energy within this state (Electric Industry Competition Committee)

54-35.2-02 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)

54-40-01 Approve any agreement between a North Dakota state entity and South Dakota to form a bistate authority (Budget Committee on Government Services)

54-44-04 Receive report from the director of the Office of Management and Budget on the status of tobacco settlement funds and related information (Budget Section)

54-44-16 Receive report from the Office of Management and Budget regarding any purchase of oil put options by the State Investment Board to offset reduced state general fund oil and gas tax revenues due to oil and gas prices falling below selected levels (Budget Section)

54-44.1-07 Prescribe form of budget information prepared by the director of the budget (Budget Section)

54-44.1-12.1 Object to any allotment by the director of the budget, any expenditure of a budget unit, or any failure to make an allotment or expenditure if the action or failure to act is contrary to legislative intent (Budget Section)

54-44.1-13.1 Approve reduction of budgets due to initiative or referendum action (Budget Section)

54-52.1-08.2 Approve terminology adopted by the Public Employees Retirement System Board to comply with federal requirements (Employee Benefits Programs Committee)

54-56-03 Approve grants, not otherwise specifically approved by the Legislative Assembly, distributed by the Children's Services Coordinating Committee to children's services organizations and programs (Budget Section)

54-59-02.1 Receive from the Chief Information Officer recommendations of the department's advisory committee regarding major software projects for consideration and the drafting of appropriate legislation to implement

	the recommendations (Information Technology 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)
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)
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)
54-59-19	Receive summary of annual report from the Information Technology Department (Budget Section)
54-59-19	Receive annual report from the Information Technology Department (Information Technology Committee)
54-59-19	Receive summary of annual report from the Information Technology Department (Legislative Audit and Fiscal Review Committee)
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)
54-60-10	Approve expenditures exceeding $130,000 a biennium by the Department of Commerce from its operating fund for web site maintenance (Budget Section)
54-60-10	Receive report annually from the Department of Commerce regarding money spent to administer an Internet web site that provides career guidance and job opportunity services (Budget Section)
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 (Emergency Services Committee)
57-40.6-12	Receive 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 (Emergency Services 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)
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)
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)
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)
65-08.1-02	Authorize establishment of casualty insurance organization to provide extraterritorial workers' compensation insurance (Budget Section)

2001 Session Laws Citation	Subject Matter (Committee)
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 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 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)

2003 Session Laws Citation	Subject Matter (Committee)
Chapter 3 § 11	Approve obtaining and using funds from any source by the Forest Service to assist in the construction of equipment and supply storage buildings in Towner and Bottineau (Budget Section)
Chapter 3 § 31	Receive a report from the State Board of Higher Education at the first meeting of the Budget Section after July 1, 2004, regarding the internship program implemented to attract students to high-growth occupations in the state and implement a student internship program (Budget Section)
Chapter 4 § 13	Receive report from the State Department of Health on the status of outsourcing employee positions whenever reasonable (Budget Section)
Chapter 7 § 3	Receive from the State Auditor the results of the performance audit of the Department of Veterans Affairs and the Administrative Committee on Veterans Affairs by July 1, 2004 (Legislative Audit and Fiscal Review Committee)
Chapter 7 § 4	Receive periodic reports from a representative of the Veterans Home governing board on the status of the board's progress in developing and implementing a strategic plan for the Veterans Home during the 2003-04 interim (Budget Section)
Chapter 7 § 6	Receive report from the Veterans Home on any line item transfer of appropriation authority between line items for the 2001-03 biennium to implement changes in technology and telecommunications (Budget Section)
Chapter 14 § 5	Receive report from the Children's Services Coordinating Committee at least twice during the 2003-04 interim on the amount of "refinancing" funds generated and the uses of the funds for the 2003-05 biennium (Budget Committee on Human Services)
Chapter 15 § 14	Receive report from the Industrial Commission before November 1, 2004, regarding recommendations for merger of the Oil and Gas Division and Geological Survey (Budget Section)
Chapter 18 § 9	Receive report annually during the 2003-04 interim from the commissioner of commerce regarding specified economic goals and associated benchmarks (Economic Development Committee)
Chapter 33 § 7	Receive report from the Department of Human Services after June 30, 2004, regarding any transfer of appropriation authority between line items and between subdivisions in excess of $50,000 (Budget Section)
Chapter 36 § 10	Approve transfers from the earnings and undivided profits of the Bank of North Dakota to the state general fund, not exceeding the lesser of $9 million or the shortfall of actual general fund revenue collections compared to the March 2003 legislative forecast (Budget Section)
Chapter 36 § 30	Receive information from the Information Technology Department relating to the delivery of consolidated services to agencies

	and status of accumulated savings (Information Technology Committee)
Chapter 36 § 30	Receive information from the Information Technology Department relating to the delivery of consolidated services to agencies and status of accumulated savings (Budget Section)
Chapter 36 § 31	Administer appropriation for the purpose of upgrading the sound systems in the House and Senate chambers (Legislative Management Committee)
Chapter 36 § 42	Receive report in December of even-numbered years from the director of the Office of Management and Budget on specified commodities and services exempted by the director from the procurement requirements of NDCC Chapter 54-44.4 (Budget Section)
Chapter 157 § 10	Receive report from the Education Standards and Practices Board before July 1, 2004, regarding potential changes to the licensure process and the impact of those changes (Education Committee)
Chapter 231 § 5	Receive certification from the Department of Human Services by October 1, 2004, of whether the department and developmental disabilities service providers have reached an agreement on a new fee-for-service system (Budget Committee on Human Services)
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 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 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 665 § 7	Receive periodic reports from the Information Technology Department regarding budgeted and actual information technology equipment and software purchases and estimated savings by funding source (Information Technology Committee)
Chapter 665 § 8	Receive regular reports from the Office of Management and Budget regarding transfers of funds between line items for state agencies by the director of the Office of Management and Budget and the State Treasurer as may be requested to accommodate information technology funding reductions made by the 58th Legislative Assembly (Budget Section)
Chapter 665 § 12	Receive information from the Information Technology Department relating to the delivery of consolidated services to agencies and status of accumulated savings (Budget Section)
Chapter 665 § 12	Receive information from the Information Technology Department relating to the delivery of consolidated services to agencies and status of accumulated savings (Information Technology Committee)
Chapter 665 § 13	Contract with consultants to conduct an information technology organizational study and an information technology management study and consultant oversight by October 1, 2003 (Information Technology Committee)
Chapter 665 § 13	Receive periodic progress reports on the status of the information technology organizational study and the information technology management study (Information Technology Committee)
Chapter 665 § 13	Receive final report on the information technology organizational study and the information

technology management study (Budget Section)

Chapter 666 § 5 — Receive report at the fall 2003 and summer 2004 meetings from the Department of Corrections and Rehabilitation and county jails contracting to house state female inmates on the implementation and procedures of contracting with counties to house state female inmates (Budget Section)

Chapter 666 § 8 — Receive from the State Auditor the results of the performance audit of the Department of Corrections and Rehabilitation if conducted between July 1, 2003, and January 1, 2005 (Legislative Audit and Fiscal Review Committee)

Chapter 667 § 33 — Receive information from the Superintendent of Public Instruction regarding the estimated costs that are likely to be incurred by this state during the ensuing eight years to meet the requirements of the No Child Left Behind Act of 2001 (No Child Left Behind Committee)

Chapter 667 § 34 — Receive from the Superintendent of Public Instruction, as soon after September 1, 2004, as practicable any findings and conclusions with respect to completion of the data envelopment analysis project (Education Committee)

Chapter 667 § 38 — Receive report from the Superintendent of Public Instruction regarding notices received from school boards which detail the grounds for not using at least 70 percent of new money received for per student payments and tuition apportionment payments for the purpose of increasing compensation paid to teachers (Education Committee)

Chapter 669 § 1 — Receive periodic reports from the Office of Management and Budget on state employee positions eliminated by agencies and reported agency budgetary savings (Budget Section)

Chapter 669 § 3 — Receive reports from the Office of Management and Budget and the judicial branch on the state employee salary increases provided for each year of the biennium (Budget Section)

LEGISLATIVE COUNCIL ASSIGNMENTS

The following table identifies additional assignments by the Legislative Council or the Legislative Council chairman to interim committees.

Responsibility	Interim Committee
Review and report on budget data prepared by the director of the budget	Budget Section
Review the 2004 rate increase proposed by Workforce Safety and Insurance and projections for future rate adjustments - Legislative Council chairman directive	Commerce Committee
Study issues relating to North Dakota Century Code Section 34-06-05 regarding employment under conditions that may be detrimental to health or morals - Legislative Council chairman directive	Criminal Justice Committee
Study methods for funding and providing law enforcement training in this state	Criminal Justice Committee
Monitor status of state agency and institution appropriations	Government Performance and Accountability Committee
Statutory and constitutional revision	Judicial Process Committee
Review legislative rules	Legislative Management Committee
Study corporate and personal income taxes	Taxation Committee
Study tax preferences for products, services, and entities	Taxation Committee
Study implementation and effect of the streamlined sales tax	Taxation Committee

STUDY MEASURES NOT PRIORITIZED

The following table lists the study directives not prioritized by the Legislative Council for study during the 2003-04 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
1007 § 8	Study the feasibility and desirability of establishing a separate payment rate class for the Veterans Home and the related effect on the state's general fund and the long-term care industry in this state

1023 § 3	Study the provisions of North Dakota Century Code Section 54-17.2-23 regarding the statutory limitation on the amount of capital construction lease payments paid from the general fund and the effect of increasing the percentage limitation
1439 § 4	Study the laws of driving under the influence of intoxicating liquor, the effects of adopting and implementing a graduated penalty for offenders with a high level of blood alcohol content and repeat offenders, and other general deterrents to driving under the influence
2006 § 4	Study the effect on cities and counties of repeal of the estate tax
2008 § 5	Study the feasibility and desirability of funding the Public Service Commission entirely from special fund revenue sources
2012 § 15	Study programs providing services to children with special health care needs in this state and service needs of these children which are not available under current programs
2012 § 17	Study North Dakota's long-term care continuum of services, including service delivery methods and payment systems, the cost-effectiveness of the programs and the appropriateness of rate structures, and the nursing home equalized rate policy
2027 § 2 (2001)	Study the efficiency and effectiveness of each motor vehicle branch office included in the motor vehicle branch office pilot project
2249 § 4	Study issues relating to the protection of historical or archaeological artifacts or sites that are found or located upon land owned by the state or its political subdivisions or otherwise come into the custody or possession of the state or its political subdivisions
2287 § 1	Study the feasibility and desirability of providing for the licensure of accredited business accountants
3002	Study the total amount of tax-exempt property by county; the loss of tax revenues from flooded property and from previously taxable property that is purchased by tax-exempt entities, including ownership in trust for Indian tribes; and the impact of the tax status of these tax-exempt properties on the ability of local communities to provide social services, including child support enforcement services
3003	Study state and local funding obligations for social services, including child support enforcement services
3008	Study the use of electronic home detention for nonviolent offenders
3012	Study the laws of this state concerning arbitration of construction issues with the Department of Transportation
3013	Study the laws of this state concerning abandonment and vacation of sections of routes of the state highway system
3018	Study the impact of high-volume grain terminals on local highway systems and possible methods of mitigating the impact
3023	Study the feasibility and desirability of establishing a regional dental school in North Dakota within the North Dakota University System and in conjunction with the School of Dentistry at the University of Minnesota
3024	Study the feasibility and desirability of establishing a regional school of veterinary medicine and providing preference for resident students who specialize in food animal clinical studies at the out-of-state veterinary schools participating in the professional student exchange program within the North Dakota University System budget
3026	Study the use of E85 fuel by the state
3032	Study the feasibility and desirability of converting vacant public school buildings in rural areas into methamphetamine detoxification and treatment facilities
3034	Study the civil commitment laws in North Dakota Century Code Chapter 25-03.1, court decisions concerning civil commitment, and the civil commitment laws of other states
3050	Study the equity of the current system for awarding workers' compensation death benefits and the feasibility and desirability of creating a death benefit investment system
3055	Study the patterns of migration from rural to urban areas experienced by this state and by other Midwestern states and explore various opportunities for revitalizing and strengthening rural communities, including new initiatives and reforms of existing policies
3056	Study whether this state is experiencing a medical insurance crisis, including a study of methods of improving the

availability and affordability of liability insurance and the feasibility of allowing medical providers and medical facilities to participate in an insurance reserve fund managed by the North Dakota Insurance Reserve Fund or other like entity

3059 Study small claims court

3063 Study the feasibility and desirability of establishing an exchange program for emerging leaders

3064 Study the use of remote-controlled locomotives and related safety and security

3073 Study the effectiveness and appropriateness of tax preferences provided by state law and discretionary action of political subdivisions

4014 Study methods for funding and providing law enforcement training in this state

4019 Study actions that can be taken at the state level to address the problem of inaccurate or obsolete information on consumer reports

4029 Study issues relating to the Indian population of the state, including sovereignty, educational opportunities, cultural understanding, population dispersement, unemployment, health concerns, suicide rates, living conditions, and impact on the caseloads of the Department of Human Services and the Department of Corrections and Rehabilitation

4035 Study legislative alternatives to foster and promote economic development in areas on or near Indian reservations in North Dakota

2005 NORTH DAKOTA LEGISLATIVE COUNCIL BILL AND RESOLUTION SUMMARIES

HOUSE

House Bill No. 1025 - County Mill Levy Consolidation. This bill revises the consolidated county general fund levy option by removing from the consolidated general fund the specific mill levies for the industrial development organization, county parks and recreation, library fund, weed board and weed control, and weather modification; decreasing the maximum general fund levy from 134 to 118 mills; and removing the general fund levy increase limitations that are based on the consumer price index. (Advisory Commission on Intergovernmental Relations)

House Bill No. 1026 - Delinquent Property Tax Foreclosure. This bill decreases from approximately five years to approximately three years the period of time in which foreclosure will take place for delinquent property taxes. In order to assist with the transition to the shorter foreclosure period, the bill also allows a board of county commissioners to waive all or part of the penalties and interest on delinquent real estate taxes if the board determines the reduced period for foreclosure creates a hardship for similarly situated taxpayers. (Advisory Commission on Intergovernmental Relations)

House Bill No. 1027 - Unemployment Compensation Tax Rate. This bill revises the formula for determining unemployment compensation tax rates so that a proportionately greater responsibility is shifted to negative balance employers for that portion of the unemployment insurance tax burden which represents the amount of revenue necessary to make due progress toward the unemployment insurance reserve fund solvency target. (Commerce Committee)

House Bill No. 1028 - Job Service North Dakota Advisory Council. This bill establishes a seven-member Job Service North Dakota Advisory Council, appointed by the Governor, for the purpose of advising Job Service North Dakota regarding issues relating to the operations, effectiveness, fairness, and efficiency of the unemployment insurance program. (Commerce Committee)

House Bill No. 1029 - Vulnerable Adult Abuse and Neglect Education and Awareness Campaign. This bill provides an appropriation to the Department of Human Services for the purpose of implementing an education and awareness campaign to inform the public about vulnerable adult abuse and neglect, including the manner in which incidents of adult abuse, neglect, and exploitation may be reported. (Criminal Justice Committee)

House Bill No. 1030 - Smoking Restrictions in Public Places and Nonpublic Workplaces. This bill, with certain exceptions, prohibits smoking in places of public access, publicly owned buildings or offices, and nonpublic workplaces and provides for a $100 penalty for violations with a maximum of $500 for second and subsequent offenses. (Criminal Justice Committee)

House Bill No. 1031 - New and Expanding Business Tax Exemption. This bill extends from 5 to 10 years the maximum length of the tax exemption a municipality may grant to a new and expanding business and allows a new and expanding business to receive the tax exemption granted by the municipality regardless of whether the new and expanding business is located within an urban renewal development or renewal area. (Economic Development Committee)

House Bill No. 1032 - Supplemental Payments. This bill removes unrestricted federal revenue from the supplemental payment formula. (Education Committee)

House Bill No. 1033 - School District Transportation Payments. This bill requires that school district transportation payments be calculated using data envelopment analysis. (Education Committee)

House Bill No. 1034 - Attorney General - Counsel to Boards of Health. This bill authorizes the Attorney General to provide legal counsel and legal opinions to local boards of health. (Emergency Services Committee)

House Bill No. 1035 - Government Performance and Accountability System. This bill creates a government performance and accountability system to be established and maintained by the Office of Management and Budget subject to review of the Government Performance and Accountability Committee. The system is to focus on results of major agency activities and is to provide agency managers, the Governor, the Legislative Assembly, and the public with the information necessary to evaluate and assess agency performance and accountability for the purpose of ensuring that state government services are effective and state resources are used efficiently. The bill also provides an appropriation for administering the government performance and accountability system. (Government Performance and Accountability Committee)

House Bill No. 1036 - Penalties for Release of Confidential Records. This bill makes the penalty for the release of any confidential information consistent throughout the North Dakota Century Code by changing those sections of the Century Code which provide for a penalty that is different from the general penalty contained in North Dakota Century Code Section 12.1-13-01, a Class C felony. (Judicial Process Committee)

House Bill No. 1037 - Technical Corrections Act. This bill eliminates inaccurate or obsolete name and statutory references or superfluous language in the Century Code. (Judicial Process Committee)

House Bill No. 1038 - Advisory Commission on the No Child Left Behind Act. This bill creates a 13-member Advisory Commission on the No Child Left Behind Act and continues the interim No Child Left Behind Committee through the 2005-06 interim. (No Child Left Behind Committee)

House Bill No. 1039 - Auctioneer Bonds. This bill allows auctioneers and auction clerks the option of providing errors and omissions and liability insurance instead of a bond. (Public Services Committee)

House Bill No. 1040 - Income Tax on Out-of-State Bonds' Interest. This bill requires adding back out-of-state bonds' interest earnings to individual taxable income on Form ND-1, for those bonds purchased after December 31, 2005. (Taxation Committee)

House Bill No. 1041 - Nonresident Military Income Tax Refunds. This bill allows individuals to claim an income tax refund for taxable years 2001 and 2002 if nonresident military income was used to determine the initial tax on North Dakota taxable income. The bill allows refund claims to be filed until April 15, 2006. (Taxation Committee)

House Bill No. 1042 - Streamlined Sales Tax Governing Board Membership. This bill provides for North Dakota membership on the Streamlined Sales Tax Governing Board, consisting of two members of the House of Representatives and two members of the Senate appointed by the Legislative Council chairman. (Taxation Committee)

House Bill No. 1043 - Streamlined Sales and Use Tax Agreement Compliance. This bill brings North Dakota into full compliance with the Streamlined Sales and Use Tax Agreement effective January 1, 2006. The bill inserts appropriate statutory references to farm machinery and alcoholic beverage gross receipts taxes to allow those taxes to continue to be collected by cities and counties at the current rate. The bill provides that a cap provided by city or county home rule for sales taxes on a single purchase will be replaced in 2006 with a refund provision requiring the retailer to collect the full amount of city or county sales taxes and allowing the purchaser to claim a refund from the Tax Commissioner as if the cap remained in place. The bill changes the 1 percent lodging tax for Lewis and Clark Bicentennial funding into a gross receipts tax but does not change uses of the revenue from the tax. (Taxation Committee)

House Bill No. 1044 - Electronic Lien Notification Procedures. This bill creates an electronic lien notification procedure for motor vehicles. (Transportation Committee)

House Concurrent Resolution No. 3001 - Child Support Study. This resolution provides for a Legislative Council study of the legal and enforcement issues relating to child support collections on Indian reservations, including state and tribal court jurisdictions, recognition of income-withholding orders, and logistics involved in transferring child support collected to custodial parents. (Budget Committee on Human Services)

Senate Bill No. 2024 - Document Preservation Fund. This bill removes the June 30, 2005, expiration date for the document preservation fund and continues the additional fees imposed for the purpose of funding the document preservation fund. (Advisory Commission on Intergovernmental Relations)

Senate Bill No. 2025 - Legislative Approval of Tribal-State Gaming Compacts. This bill requires the Governor to obtain legislative approval before entering, renewing, amending, or extending any tribal-state gaming compact. (Budget Committee on Human Services)

Senate Bill No. 2026 - Contractor Licensing and Regulation. This bill authorizes the Secretary of State to request criminal history record information regarding an applicant for a contractor's license or contractor seeking to renew a license; authorizes the Attorney General to bring a complaint against a contractor under consumer fraud laws; and specifies additional grounds upon which the Secretary of State may deny an application for a contractor's license, refuse to renew a license, or revoke a license. (Commerce Committee)

Senate Bill No. 2027 - Commission on Legal Counsel for Indigents. This bill establishes the Commission on Legal Counsel for Indigents, provides for the powers and duties of the commission, provides for a transition of indigent defense services from the Supreme Court to the commission, and provides for an appropriation to fund the establishment of the commission. (Criminal Justice Committee)

Senate Bill No. 2028 - Guardianship Services. This bill requires the Department of Human Services to contract with an entity to create and coordinate a unified system for the provision of guardianship services to vulnerable adults who are ineligible for developmental disabilities case management services. The bill also provides an appropriation for the program. (Criminal Justice Committee)

Senate Bill No. 2029 - Successor Guardian Appointments. This bill establishes a procedure for the current guardian or any interested person to file a motion with the court for the appointment of a successor guardian. (Criminal Justice Committee)

Senate Bill No. 2030 - Guardian and Conservator Annual Reports. This bill provides for an annual reporting requirement for guardians and conservators and requires the State Court Administrator's office to develop and provide a form that may be used to fulfill reporting requirements. (Criminal Justice Committee)

Senate Bill No. 2031 - Law Enforcement Training. This bill provides an appropriation to the Highway Patrol for the purpose of providing training for law enforcement officers and other emergency services providers. (Criminal Justice Committee)

Senate Bill No. 2032 - Business Initiative. This bill addresses a broad range of economic development and business climate issues, such as a business hotline pilot program, a Department of Commerce Division of International Trade, a local economic developer training program, a Dakota manufacturing initiative, and various studies relating to corporate taxes and economic development tax incentives, technology commercialization, economic development incentives, risk capital, intellectual property, liability insurance, and transportation. (Economic Development Committee)

Senate Bill No. 2033 - School District Residency Determinations. This bill requires an annual determination regarding the school district of residence for those students who are placed for noneducational reasons. (Education Committee)

Senate Bill No. 2034 - Higher Education Special Funds Continuing Appropriation. This bill continues the continuing appropriation of higher education institutions' special revenue funds, including tuition, through June 30, 2007. (Higher Education Committee)

Senate Bill No. 2035 - North Dakota University System Budget Request and Appropriation. This bill continues the requirement that the budget request for the North Dakota 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 North Dakota University System include block grants for a base funding appropriation and for an initiative funding appropriation and an appropriation for asset funding through June 30, 2007. (Higher Education Committee)

Senate Bill No. 2036 - North Dakota University System Unspent General Fund Appropriations. This bill continues the North Dakota University System authority to carry over at the end of the biennium unspent general fund appropriations through June 30, 2007. (Higher Education Committee)

Senate Bill No. 2037 - Information Technology Statutory Provisions. This bill provides that the State Board of Higher Education is responsible for managing and regulating information technology planning and services for institutions under its control; excludes certain policies, standards, and guidelines of the Information Technology Department from the Administrative Agencies Practice Act; authorizes the Information Technology Committee to review information technology projects of the legislative branch in addition to major information technology projects of the executive and judicial branches; and requires the Information Technology Department to develop policies, standards, and guidelines using a process involving advice from state agencies and institutions. (Information Technology Committee)

Senate Bill No. 2038 - Statewide Information Technology Improvements Revolving Fund. This bill establishes a statewide information technology improvements revolving fund for information technology projects providing improvements in the efficiency of state

government services or information technology projects involving multiple state agencies or institutions. (Information Technology Committee)

Senate Bill No. 2039 - Organizational Session Meeting. This bill provides for the organizational session to convene on the first Monday in December rather than the first Tuesday after the first Monday at a time designated by the Legislative Council, rather than at 9:00 a.m. (Legislative Management Committee)

Senate Bill No. 2040 - Surface Coal Mining Performance Bond Release Notification. This bill deletes the requirements that a request for bond release be published in other daily newspapers of general circulation in the locality of the surface coal mining operation in addition to the official newspaper of the county and that subsurface owners within the permit area proposed for bond release be notified. (Natural Resources Committee)

Senate Bill No. 2041 - Transportation of Game and Fish Taken on Indian Trust Lands. This bill provides that properly tagged game birds legally taken on Indian trust land may be possessed, transported, or shipped in state and that properly tagged big game legally taken on Indian trust land may be transported, shipped, or possessed within the state. (Natural Resources Committee)

Senate Bill No. 2042 - Penalty for Truancy. This bill penalizes parents who fail to ensure their children's attendance at school and allows for the cancellation of a truant student's driver's license. (No Child Left Behind Committee)

Senate Bill No. 2043 - State Bonding Fund Application Procedure. The bill creates an application procedure under the state bonding fund and requires the coverage applied for to be based on the amount of money and property handled and the opportunity for defalcation. The bill limits claims to two years before the filing of a claim. (Public Services Committee)

Senate Bill No. 2044 - State Seed Law. This bill clarifies state seed law and makes some substantive changes, including the provision of a per diem for Seed Commission members; specific creation of the power of the Seed Commissioner to employ, appoint, or contract with agents; and longer periods between germination tests for certain seed. (Public Services Committee)

Senate Bill No. 2045 - Passthrough Entity Income Tax Withholding. This bill requires passthrough entities such as S corporations, partnerships, trusts, limited liability companies, and limited liability partnerships to choose between the options of filing a combined report in North Dakota or withholding North Dakota income taxes on distributions to nonresident members of the passthrough entity. (Taxation Committee)

Senate Bill No. 2046 - Tax Haven Reporting. This bill requires inclusion of corporations in a unitary relationship and incorporated in a tax haven as part of a water's edge corporate income tax filing group. (Taxation Committee)

Senate Bill No. 2047 - Modification of No-Fault Automobile Insurance. This bill modifies no-fault automobile insurance by requiring the vehicle to be in motion or have the injury caused by another vehicle; removing work loss, replacement services loss, survivors' income loss, and survivors' replacement services; removing charges for nonprescription drugs and experimental and medically unproven treatment from coverage; and removing diagnostic testing from the medical expenses used to determine if there is a serious injury. (Transportation Committee)

Senate Concurrent Resolution No. 4001 - Block Grant Hearings. This resolution authorizes the Budget Section to hold legislative hearings required for receipt of federal block grant funds. (Budget Section)

Senate Concurrent Resolution No. 4002 - Performance and Accountability Report. This resolution directs the Legislative Council to study the State Board of Higher Education performance and accountability measures included in the report required by North Dakota Century Code Section 15-10-14.2. (Higher Education Committee)